Securities and Exchange Commission Historical Society
Interview with Lee Spencer
Conducted on February 18, 2009, by Kenneth Durr

KD: Interview with Lee Spencer, February 18th, 2009, in New York City by Kenneth Durr. Well, thank you for taking some time to talk to me. I appreciate it.

LS: Surely.

KD: I want to start by bringing you up to the point where you got to the SEC. A little bit about education. You went to Princeton, I guess?

LS: Correct.

KD: Did you plan to go into law school at that point?

LS: Yes, I thought I would. When I studied for a year, I was a philosophy major. I studied a year at the University of Strasbourg in France on a fellowship, and then returned and went and graduated from Yale Law School.

KD: A philosophy major is an unusual route to take.

LS: Well, it was interesting. For lawyers, it's analytical. I think it's good to do young—settle with a world view as well as learn how to approach life where you have less anxiety on that subject later. It was also an extremely strong department at Princeton.

KD: Okay. And Yale Law then.

LS: Right.

KD: Did you take any securities courses at that point?

LS: Yes. I had a corporate finance course with Marvin Shulstein, which had a securities element in it, so I had some background in it.

KD: Did that corporate finance course set you on the path you ultimately took?

LS: I don't think so—possibly. It was also a process of elimination. I knew I did not want to be a litigator, per se, and that meant more corporate law by nature, and I found it interesting. Again, same thing. I thought it was analytical and challenging.

KD: Okay. And then you went to Sullivan & Cromwell, right?

LS: Correct.

KD: What kind of work did you do there?

LS: Very extensive securities work. It was a tremendous opportunity to learn because of the diversity of subject matter. We tended to represent both companies, but also investment banks on deals, so public offerings of all types. And I worked on probably well over a hundred financings—so you saw a tremendous amount, being an advantage, I suppose, of Wall Street, which tends to be at the fulcrum of that. Plus the standards you practiced were high, and I think I learned better how to do a job right.

KD: Who was your mentor there?

LS: Mentor is a term I don't use [laughter]. No one particular person. They were all outstanding people.

KD: Okay. And this was in the early 70s?

LS: Yes, from 1969 to '76. When I was at Yale Law School, in our senior seminar, I had said to my then-professor, Charlie Reich, who wrote *The Greening of America*, it was sort of the anthem of the moment. Actually, some of us actually helped teach his undergraduate course at Yale. I said I wanted to practice for a while and then go into government. But, I said, you needed some experience. I felt I did, certainly. I had no economic background, knew little about business. But I thought, generally in life, you could be an infant prodigy in mathematics, but not in human affairs. You needed some experience.

And Charlie twitted me a little bit. He said, "Oh, you're going to go just make a lot of money and not do it," but I hung in there and sort of kept my eye out for an opportunity in the government, and the SEC would be a natural place with my background. And, sure enough, one popped up, fortunately for me.

KD: Tell me about how it surfaced.

LS: Well, a colleague was down at the SEC as an assistant to the chairman, I think. And he knew I had expressed this view, and he saw an opportunity, an opening, and called it to my attention. And I went down and was fortunate to obtain the position.

KD: Who was that?

LS: Bob Craft, as I recall.

KD: Okay. So did you go into investment management at that point?

LS: Yes, right. And there were a couple of studies going on at the time. I came in as the chief counsel of the division of investment management. There were a couple of studies going on, and I wound up spending most of my time, the first few months, on something called the Bank Study, which was a congressionally-mandated inquiry into banking inroads in the securities area. The mutual funds and brokers were complaining a little bit about bank activities and comparable regulation, and several of us took an extended look

at that, and wrote a long report basically suggesting some modifications of the regulatory structure. Nothing dramatic at that time. And that was the bulk of '76, the remainder of '76, as I recall.

And then I went on to function as the chief counsel, per se, which is the chief interpretive officer in terms of writing no-action letters, legal interpretations, and other administrative tasks, which was interesting. The mutual fund area was new to me, so I was fortunate, again, to learn a great deal of it, for me, about mutual funds. Interesting area.

KD: Was Sid Mendelsohn your division director?

LS: No, he was not. He was an associate director. And then about a year later, Ann Jones was the director. Ann went over to another high-level position with another federal organization, and Sidney became the director, and I became one of the two associate directors at that time, simultaneously. And I think Rod Hills was the chairman for a short time when I came in, and Harold Williams was the chair at this time. And I served as associate director for, I think, about a year.

KD: Well, tell me about some of the big issues in the investment management area at that point. Clearly, the bank study was a response to one of them.

LS: Right.

KD: What else was going on then?

LS: There were a variety of things. I would say that at that particular time, there was no dramatic, as there came to be, overriding regulatory effort. There were a series of smaller adjustments to rules, and we were active in that and made a number of them. But it was not one dominant set of rules at that time.

KD: Did you work very closely with the ICI?

LS: Surely, of course. They were the, for lack of a better word, lobbying organization, fine outfit. And they would agree with us sometimes and disagree with us sometimes.

KD: It was you and Marty Lybecker, right?

LS: He was the other director.

KD: How did you divide up the work?

LS: It was previously divided for us [laughter].

KD: How was it?

LS: And as I recall, I continued to have this chief counsel, which at that time would then report to me. So you have the interpretive arm, and then the disclosure area, which fitted my background as an SEC lawyer in private practice. It was a natural fit. So the review of mutual fund prospectuses, so forth, was something of a type I had done before. I specifically directed mutual funds, but I knew from prospectuses and the like. And the third primary area was an investment advisor area. And Marty would tend to have rule making, I think, aspects, and the insurance products.

KD: You were also involved a little bit with something called the option study. Is that right?

LS: Only very briefly. I think I may have been extremely briefly, but not enough to even mention.

KD: It was about that time you were getting ready to head over to corporate finance.

LS: That's where I started. It was after exploring the option study, but then almost simultaneously, it was a very brief time an option study. In fact, Ed Greene had come in as the new director of corporation finance, and I'd been recommended to him, and he asked me to be the deputy director of corp fin, which I was delighted to do. Again, a new area for me of responsibility. That was a subject matter I was familiar with from my private practice, of course. That's what I'd largely done in private practice, so that was useful background.

KD: Right. And it had also been your specialty in the investment management—

LS: Exactly. So, it was logical.

KD: Well, corp fin was going through something of a transition at that point, I guess. Right?

LS: It was a very active time, very productive time. It wasn't going through it. It was initiated by the staff.

KD: Tell me about that.

LS: One was the review function. Putting aside the glossy rules that often get a great deal of attention, we had made a rule making at that time. It is, largely, and the bulk of the staff, very able staff, is devoted to review of disclosure documents, the text and the financial statements. And there was—I didn't bring much, but just the review function, we had an article on that, what the SEC will do with all these filings here. There I am [laughter] sort of shaggy. It was major enough, for example, *Business Week* would cover it, and the times. There were articles in the *Washington Post*. And it was trying to improve the review process and maximize the staff we had. Of course, the SEC was never replete with a great deal of money.

And one provision was that we did not have enough staff, never had had frankly, to review all the filings. So it became how did you select which filings to do and then how

to review them. There was organization by industry basis, by specialty, and then assigned to groups who would specialize in those areas, airlines, or utilities or some seemed to be logical. And any group under, say, an assistant director, I think was the level by which it was certainly divided then, would have assigned industry. And that would permit, we thought, a more informed review.

The staff would tend to see the same repetitive sequence of issues. They could read and gather data. Those units would subscribe to literature in, say for example, the airline industry, and become more knowledgeable about it instead of sort of scattered and random. And I think that was a good idea, forced by necessity.

KD: So it wasn't just a perception that you couldn't look at everything.

LS: It's two different things. This was different from the quantity. This was the quality part, and I'll come to the quantity. One was just, the quality part was to specialize by each review, bring in expertise. People would have speakers to that group, literature would be subscribed for and read by that group in that area and so forth, to be sort of a more intelligent review, or as intelligent as we could do, which was good. The staff was very capable. And then secondly was something called selective review, this is how much. Clearly not enough staff personnel to review every filing. There never had been. And it got sort of mushy in the past. People would make some obligation to make a pass at a document on your table, we just couldn't do it. It wasn't getting better. The country was growing; the staff was not growing and so forth. And so the staff initiated something

called selective review, and that is just common sense. You select out on criteria which ones to review.

And it was just a logical analysis, so it would be some red flags, it was some trouble situation and, of course, you would go look at it. There would be some, we developed some statistical measurements that seemed to be correct in finding possible issues. You would have industry trends that might lead you to a review of certain findings when they came in, and some were done just randomly. Again, to make sure that however intelligently designed it was, no one could feel that they were automatically coming through, and then slip something by. So it was a combination.

Most of the staff worked as an entirety to develop those standards of selective review, and they were put in and, as far as we know, worked fine. And they could be, and were, moderated over time with experience.

KD: You talk about the staff implementing this.

LS: Right.

KD: I want to get a sense of how that was developed because that's a pretty important change. Was this something that Ed Greene talked to you about when he brought you in and said, "You know, I really want to figure out a better way to do this."?

LS: I don't recall the origin of that. It's been too many years, but Ed was the director, so he would certainly be the person responsible for it, primarily. I was the deputy director and so forth. And Ed was a very imaginative and constructive man. Although there are many ideas in this, he was responsible for all of them and, undoubtedly, initiated many of them. Probably, this may have been one, but I don't recall specifically.

KD: Did you get any push-back from further up in the—

LS: No, no, no.

KD: How about support? Was this considered to be a good idea?

LS: Yes. And I think this is something that would generally be done at the staff level. I wouldn't expect—you would expect to tell the Commission what you were doing, of course, but it would be classically done by the staff, I think, knowing how it self-reviews things. It was logical. It was not controversial at the time. You could stop for a moment on the notion of you're not reviewing something at all, but then when you looked at the numbers, it became apparent that there just wasn't the staff to review everything, and to attempt to do that would water down the ability to look at the documents as a whole, so it wasn't controversial.

KD: You talked about coming in under Rod Hills, and then Harold Williams took over shortly after that.

LS: Right.

KD: Did you see a shift in focus at that point?

LS: It's hard to say. I think it was too short a time in the first instance to make a comparison. In such a short time I was there under him, it would be not fair to comment about that.

KD: Well, give me your sense of the Commission under Harold Williams and what his—

LS: He was there for several years when I was there, and he was a strong chairman, and we had a strong commissioner. They were very able. Chairman Williams was a former CEO, and I would characterize his chairmanship as an able CEO's, and that is he was very into appropriate control. He set the agenda, and it certainly would never see the light of day at the Commission unless he was ready to have the item come up. He was meticulous about his personal review of matters of the nature that would come to the Commission, and organized that way. So I would say that was the primary view there of a strong CEO who managed closely the process.

KD: Were you able to see the Commission in action at this point when you were deputy –

LS: At all stages.

KD: Okay. So would you and Ed Greene both be there when the Commission–

LS: Generally, we would be there. We were there actively because we were active in rule making at the time, so we were up for that. Occasionally we would have comments on a few other things. But enforcement was regularly there because every enforcement action had to be approved by the Commission. And often, there were disclosure implications to that, so we would be expected to provide our comment on that, and so we were there a lot.

KD: Can you give me an instance of that? Because, of course, this is a point at which enforcement has got a real high profile, and is giving the Commission a lot of work to do. Tell me about some of the kinds of things that you would've been called in –

LS: Oh, generally, it would be on an issue – they're all confidential – but of the type, it would be of an interpretation of a rule or a requirement. Enforcement is appropriately aggressive. You want enforcement to be aggressive. The issue would be, always: is that a fair meeting of rule, or is it a stretch to get someone? On occasion, I suppose theoretically, it's possible to not stretch a rule far enough to cover something. As a practical matter, in reality, it tends to be more of a matter in reverse. A prosecutor tends to take a very expansive view of a rule, and other people may disagree as to implications of that type and their interpretation more broadly. That's the question. Because an enforcement action, in fact, becomes a rule.

And if you take the position, this is what the rule says, then people, by and large, feel an obligation to follow that out there. And that depends on, that may or may not be right, depending on the nature of the rule. And occasionally, by the way, enforcement would be there, usually conversely, when we were proposing a rule or a major interpretation from their perspective on that. So it was a back-and-forth process, friendly and courteous generally, but active discussions. And discussions were always very open at the Commission. There are two sense of open. The enforcement action would not be open to the public. But within the Commission, they were dynamic and they were very active, and very good discussions, very thorough. And, ultimately, the Commission, by majority vote, would decide on those. And you would have a free set of expression of views before them. And that was regular.

KD: When Stanley Sporkin was running enforcement, did you find yourself, you know, reminding them on, say, more occasions than later on that they were stretching?

LS: No.

KD: During the Fedders years or something like that?

LS: Not enough to comment. I mean, Stanley—I'm a fan of all those people. They were all very able. It's more the nature of the beast, so to speak, of a prosecutor than that. And it would be unfair of me to comment on that, statistically. I don't have a recollection of it as being that different.

KD: Okay.

LS: It may have been, but I don't recall it.

KD: Well, Ed Greene went up to general counsel. Is that right?

LS: Over to general – we always looked at it at corp fin [laughter]. We would say over to general counsel.

KD: Okay, so he went over about '81 or so.

LS: Yes. Of course, yes. He's a very outstanding securities lawyer.

KD: Was it pretty clear that you were going to get the top job there at that point?

LS: It was virtually simultaneous, so I don't recall the details. They happened about the same time. And I think the chairman wanted Ed to be the general counsel at the time, which is fine. Therefore, that created an opening and it just happened at the same time, as I recall.

KD: Okay. Did you, basically, hit the ground running? Were there any surprises, or were there any things that you had to get used to?

LS: No. Because when I was deputy director, actually, the extent was coterminous with that of the director. I mean, the scope was over the entire division. So I tended to do more operating-type things as deputy director, you know, as a COO type things, by analogy, but the subject matter areas were the same.

KD: Okay. So, I guess going back, you and Ed Greene split things up a little bit on that corporate level where he's setting larger policy, and you're making sure—

LS: Yes, he would be more like a CEO, chief executive officer; I would be more of a COO at that time, chief. Make sure the trains were running on time. For example, one thing we did in that period is for everything that qualified as a project, I mean a non-routine matter, we developed a piece of paper, which had its due date, what it was, who was to do it and how it was going to get done, and we kept it, and that would be agreed to by the people who were on the staff, and we'd review it every week. So to keep the trains moving on time, it was very organized. And we developed that ourselves as a monitoring thing so that things were kept on track, by and large, for clarity, and make sure things were falling back. As we'd concentrate on this, some were deemed smaller. Things we may deem small may not be small to someone else. And we all have a tendency to focus on a few matters for a variety of reasons. This was a device to make sure the trains were running on all tracks, and that characterized our operation at that time.

KD: You had a pretty experienced group of assistants, right? Folks who had been there.

LS: Yes, right. We had associate directors, of course, and the assistants. But the assistant, they were all strong, and we had to make sure people who had come in a little bit from the outside at the time, and then people who had been there for a long time. And both were valuable. In the history of tradition, the people who came in from the outside brought with them their experience from private practice, which was immense, which was very helpful, and brought that perspective. On the other hand, we had outstanding people there who had made a career of the Commission who had great instincts, had seen it before. Howard Hodges was a great chief accountant of the division of corporation finance. I'm sure Howard could have left at any time and made a substantial amount of money more at private practice. He chose to stay there.

As I recall, Howard liked to read annual reports for fun, so to speak [laughter]. And he had a very good nose for problems. He would come in on the weekend saying, "Lee," or "Ed," whoever he was talking to, "I think there may be an issue on this company. I think, you know, my sense tells me that they may be holding things on the loading dock, you know," and that led to a lot of corrective actions. And you just can't quote "buy that," tremendous experience.

KD: You say he was working as an accountant?

LS: Yes.

KD: Would he have been on call to all these various folks who are overseeing the different –

LS: The accounting function of corp fin is very important. And the staff is a blend. Corp fin was there, at least, some lawyers reviewed more of the textual matters and, of course, the financials. But as it's been said, the text is often just an elaboration of the financials. And we had accountants throughout the division. There was also an office of the chief accountant for the commission as a whole, largely, Clarence Sampson when I was there. Outstanding man. But there was also a chief accountant within corp fin. That was Howard Hodges. They worked together. The office of chief accountant would typically not review the documents. That was corp fin's job. They would set accounting policy as a whole. And then the review would take on a difficult or major issue, of course, there would be consultation both ways with the office of chief accountant. We had a sturdy corps of good accountants in corp. fin. who would look at the financial statements, where most often the most important matters are.

KD: Did they specialize in these groups that you were talking about? Somebody was—

LS: With the group, yes, which was helpful.

KD: Did those shift over time? Did people move from one area to the other?

LS: Probably, normally, through a promotion or something like that. At the time I was there, there were not that many years with the process, so I would think there would be rotation from time to time.

KD: You mentioned rules as well, and some of those things that pop up. Any landmarks in that area?

LS: Oh, it was as active a time in rule making as there's been in those years. The major focus was called integrated disclosure. And this was a process of many years, it preceded those years, although it reached its culmination and finalized basically around '84. But as you recall, there are filings you make periodically, and a company filer will make annual reports, quarterly reports and the like, 10Ks, 10Qs, and there are one-shot or episodic disclosures, like a prospectus, that comes from time to time. As a man named Milton Cohen pointed out in the Sixties—a famous article, I believe, in the *Harvard Law Review*, things in a way were backward. They had a lot of documents and information in the long, one-time public offering, but very little in the periodic filings, whereas the trading volume that was underlayed by the periodic reporting, dwarfed the amount of sales, for example, done publicly—sort of backwards.

So over time, the essence of it was to beef up the information being provided regularly to the investing public through annual and quarterly reports and the like, which correlatively would then allow less information being put physically in a prospectus, to be delivered by a prospectus, because it was already there, an investor could obtain it otherwise. And having said that simply, that was a large project.

KD: Right. Didn't Louis Loss do some work in that area?

LS: Well, he was a professor. I'm sure he would've commented on it, and there was a Federal Securities Code he did, and that's different really. But this was initiated and prior administrations came, and was very active. Most of the rules got passed in the years we were there and vetted and all like that. And there were sub-parts that had particular interest. You had always issues relating to international disclosure versus domestic. There was rule making there that raised important issues of how much you require foreign companies to invest and not. And then, certainly the thing that raised the most attention as a part of that was something called shelf registration, or Rule 415. And there had always been something called registration, sort of guides.

And there were a lot of informal guides around, so a part of this project was also to say it should either be a rule or not, you know. They have an indeterminate status, and so let's put it one way. And, by the way, this would be a good opportunity to dust these rules off for public comment, see if these guidelines and policies were still valid or not. That added a great amount of importance to this project, very worthwhile.

There had always been something called shelf registration in a policy, and this was moving it to a rule. However, it was new. It sort of represented things coming together. It was short-form prospectuses. No review in some cases, which was going on as we saw. Well-known companies tend to be well-known companies with no singular issues that didn't require review. And now a shelf registration, which even facilitated very rapid opening offerings. It also meant, as a practical matter, there could be more competition among underwriters, because you weren't tied to the process, as you might be for—easy

for a company to go pick another one if you got a lower, for whatever reason. So a combination of issues came up so that it sort of became a brouhaha.

In fact, this was the other thing that got a lot of publicity, and the Commission held hearings on it, and it was finally adopted, pretty much as proposed. They were done as a temporary ruling for a day or two, you may recall, and then finally adopted. But it was very dynamic times. A lot of the commentary was very strong, and there were public hearings on it. This is the type of disclosure, I'm just pointing to a document here, here we are, and that sort of thing. And it was, ultimately, as I said, in place, and seems to work, have worked. And there were estimates of substantial cost savings involved, and it's been operating ever since.

KD: You describe this as something that was emerging slowly out of the background. Is that fair to say? Were you thinking in these terms when you first came into corp fin, thinking about this integrated disclosure in general?

LS: Well, yes and no. As I said, there had been rule making in the area of integrated disclosure before. It certainly accelerated through a variety of reasons, I think mostly just events. There had been a corporate disclosure report that made recommendations in this area by a blue ribbon panel. The passage of time, the staff allocations related to that. There had been short-form usages before. This is sort of a coming together of a variety of areas, and then it moved to a pace where Ed—and I give Ed credit of taking an aggressive, appropriate aggressive task towards moving this through.

KD: In what way? Did he put together a group that was going to –

LS: No, it was the same people, they just said, "Let's go do this." Got the disclosure done and move the guides to yea or nay into rules, and move across the board at that period. So at that period, I think he showed leadership in terms of getting the movement going.

KD: And the whole shelf registration thing really emerges into public view, at least, just about the time that you took the post.

LS: Yes, exactly. So that was something that was a hallmark, in a way, so to speak, of when I was there.

KD: Why did that happen exactly? Was that just the logic of this building of events that you talked about, or was the Commission involved in any way?

LS: Well, the odd thing about it is it, in a way, was just a codification of what was happening anyway. We were familiar with that on the staff, not because we're brighter; we just work with it everyday. But a lot of investment bankers, particularly senior investment bankers, highly intelligent, able people had been away from this. So then the entire totality seems strikingly new, and to them, not good. And it came up a little bit coincidentally. I think the competitive aspect, frankly, also played a feature in it, might've sort of unleashed attention. And a couple of fine investment banking leaders

immediately took strong public action to protest or object. And because the train had gone way down the tracks, so to speak, they took it particularly strongly. I guess they felt they had to raise the issue strongly because there was a lot of water under the bridge on that particular rule at that point, and originally, no one objected to the rule particularly.

KD: John Whitehead was one of them.

LS: John Whitehead, yes. Very able man. He was sincere in his views. And it's sort of one of those things, brought up into a tremendous amount of attention at the time, but the Commission, I believe, handled it appropriately. The Commission held public hearings, they were widely expressed. Corporations tend to applaud it. Many of the investment bankers did not. Some did. We thought the best thing to do overall, the Commission decided, was to put it in action on a temporary basis and see what happens, and they did. And nothing malign seemed to have happened, we saw. So after a period of time, maybe a kink here or there was adjusted, not much, and it was put into place, and after that, the world moved on.

I honestly think, personally, even as a staff member taking no particular credit for it, I think it was more a sign of the times rather than the operation of the rule itself. It's just these things happen. I think you couldn't really go backward. It would've been a mistake to go backwards. Be like – rolling back the waves at that point, I think.

KD: There was a general deregulatory environment at that point too, in all aspects of the Federal Government.

LS: Of course, when Harold—it was a democratic administration when he was there, and although it was sort of deregulatory—and then of course, Chairman Shad was a Republican, so it was both parties. And I think there was that, I think it was probably less ideological than I think we on the staff, no one ever asked what political party you were in, and many of us were Democrats, others were Republican. It made no difference. It was probably, over the years, it was time for some effort like that because rules tend to just aggregate [laughter]. And, perhaps, after New Deal time, tended to be somewhat heavy handed, frankly. So it was not inappropriate for some pragmatic look to be taken about the need for that.

There was some extreme regulation interpretation. If you wrote a book, for example, in the investment advisory area, there was a staff unit you had to register as an investment advisor, virtually, and that just was silly. Well-intentioned originally, but a little bit of that. So I think the goal being taken at the time, as I said, it was not an ideological one. And things were increased, for example, and corp fin, the commission adopted a rule with the annual report that had to be signed, and executives did not like that. But what happens at this moment, since we put more emphasis on the annual reports, we thought more emphasis should be paid to the annual reports, so they were actually beefed up. So the idea wasn't more or less. It was just more efficient regulation. So there were increases in the periodic reductions allowable, and the prospectus.

KD: I guess you must've seen this as sort of rationalizing.

LS: It was rationalizing, it was not less, not ideologically just less. It was like you could take a fifty-pound burden, if you wrapped it around your ankle, it would be tough to walk. If you put it in a backpack, you could probably move pretty easily, and that's the difference. We were trying to put the backpack on the back [laughter], not around the ankle.

KD: It did appear that this was something that John Shad supported. Was that fair to say, that this was something that he picked up and helped move forward?

LS: Largely. And, I mean, he noticed, he's no investment banker, the reaction to the shelf rule itself when it came out, but he went along with it, at the end of the day.

KD: So the investment bankers were basically concerned that this would mean less business.

LS: No, that's unfair. I said that was an aspect, I think, in their view at the time, they were worried about—the express view was less time for due diligence, you know, and input. And someone else would say, if you had no review, in fact which we had, independent of the shelf rule and short forms, you know, on a one-page prospectus, there's not much to work on anyways. So the addition of the shelf rule isn't that much. He tended to conflate, one would argue, conflate several different things that were already there. But that was the issue that was raised, and I'm sure it was well-intentioned.

Mr. Whitehead was—might not want to put words in his mouth, so I won't personalize it, but some people may have been remember days when you had thirty-page prospectuses and you had, I worked on it myself when I was much younger, we actually set, I remember, a bond offering. I looked at one of my first ones I worked on, and we began in November, and we had a closing date scheduled for March, and we worked to that, you know, schedule. Four months later we financed. And, of course, that would be shelved out in five minutes today. So there was a memory of those days, I think, but a completely understandable worry, you know, about the ability to have input. We just thought it was not really properly focused on the shelf rule, per se, and we had more to do with a totality of the current regulatory structure.

And to try to do something otherwise would not make sense. If you had no review, for example, and you had a prospectus that incorporated everything by reference just wait. The Commission, there's no, nothing much would happen except a loss of opportunity, as a practical matter. But those were the issues that were raised.

KD: And speeding things up, getting rid of this four-month time lag you talked about, it's going to change the way business gets done.

LS: That's right. And a part of that too was either it was a reaction to it, not a coincidence, but then it began with Mr. Volcker, I believe, at least around those times to manage the monetary policy by more rapid adjustments. So back in the days I was talking about,

there were very few interest rate changes by the Fed, and so it doesn't make any difference so much when you had to finance. That changed dramatically, so it made a great deal of difference when you came to market, and would cost the shareholders a bundle, theoretically, if you had to wait for no purpose. And so there was also blending with the way financed worked at the time.

KD: Now there was a little bit of controversy on the Commission with Commissioner Thomas.

LS: Yes.

KD: What did she do, put out a statement or something like that?

LS: Put out a statement.

KD: What was your role? Were you called upon to come in from time to time and present, okay, here's the implications of this particular part of shelf registration?

LS: Of course, we worked for the Commissioners, or the staff, and we would come down individually if a commissioner wanted to talk about something specific, which they did from time to time, on their own or in a meeting as a whole. So we would do both of those, from time to time, on a variety of issues, if they wanted. Obviously, it was our job to keep them informed. They are the ones adopting the rule, not the staff, so we did all that.

KD: Any memorable experiences as far as that's concerned, commissioners that turned to you more than others or pursued things in, perhaps a more diligent manner or seeking more information?

LS: They all did. The commissioners were very effective when I was there. And they're all so sharp. I remember Commissioner Loomis was unusually – well, they were all very bright, but I think Bill may have been valedictorian of his class, he had an exceptional intellect. And I remember writing, when I was first there, a long memo for him on some subject, I wrote it. And he called me a few days later and said, "Oh, excellent, Mr. Spencer. I agree with the recommendations," so forth like that. "But footnote number seventy-three on page thirty-nine is a little vague to me," [laughter]. He missed nothing, you know. Any slight imprecision of expression or thinking, it would not, it would be spotted. So, it's a high standard.

KD: And, of course, he knew his way around the Commission.

LS: Yes, right.

KD: He wasn't just coming in from the outside.

LS: And the Commission, I think, worked very effectively when I was there, I must say, because the commissioners were all able, they did not come from the same perspective,

which I think is good. And I won't characterize them. Just came from different views on different issues, but it was all very open and expressed. And the discussions were healthy. I don't recall any that were hostile or acrimonious, unless maybe something—human nature being what it is—but very active. And having five commissioners and a variety of staff there meant things got pretty well hashed out. There was no missing a point, it got discussed. In my recollections, it came out well, and the right result, as one could understand it, you know, got implemented at that time.

There was no political input whatsoever when I was there. You'd occasionally get a call from a congressman or something like that. You'd be, "Thank you, congressman," and goodbye. It was no malign issue. I think the only time in my period I can recall any commentary about that, it came up in one book, it was a major insurance company where the staff – my unit and the chief accountant had suggested a quite major write down of several hundred million dollars.

And they actually ended up having a major impact on them, of course, and they asked to meet with the commission, and the chairman said fine, I guess on the theory that, you know, give them a day in court. And I recall reporters later, or someone writing a book later took issue with that. And I think because there was an empty chair, I happened to sit up at the commission, and someone found that to be untoward. It was, actually, just casual, impacted the Commission to affirm the staff's decision [laughter], and there was a write-down of several hundred million dollars, and the company understood that, and they did not like that at all, but they thought at least the process was open. We explained

the reasons why, you know, that hopefully were logical, and they did that. So, again, I think that the Commission worked very well at dealing with and not being affected by pressure, be it political or from private institutions.

KD: And you talked about Harold Williams sort of being the CEO and knowing how to run his Commission.

LS: Right.

KD: Did you see John Shad doing things –

LS: He was just different. I won't say one is better than the other. That's inappropriate, and I won't say that. Both fine chairmen, outstanding. Chairman Shad would tend to let things come to the Commission, you know, even though he might disagree with them. And that would be the difference. And so if sometimes the discussions were particularly feisty [laughter], because it certainly wasn't pre-orchestrated, and I recall his being a minority, for example at some time. It was fine with him, and there was something noble about it, I suppose. It is a Commission of five commissioners, and the main power, as I understood it, of the Chairman was the power of the agenda and appointments. And, naturally, generally, they would consult, of course, with the others anyway on both those topics. But that was the difference with Chairman Shad.

KD: Was there a sense in the early 80s that the staff was still having a great deal of input and able to really influence?

LS: Oh, it always has, yes. It always has. It's certainly then, as a whole, a varied staff, and I think any Commission would be inclined to respect the views and work of that able group. Commissioners had the final say, that's appropriate. But it worked just the way it should.

KD: Well, let's touch on some of the other things. I would assume that shelf registration was sort of the culmination of integrative disclosure, is that fair to say?

LS: Well, part of it. It was the final rules that, yes, got the most publicity, but it was that plus the other rules that sort of were put in place at that time. Integrative disclosure basically got done, and it remained in place, I must say, substantially since then.

KD: What were some of the other components that we haven't talked about at this point?

LS: Just the content of the forms themselves. Literally, what disclosure is made. I mean, the substantive requirements on a whole, all the panoply of documents were all reviewed and modified. It was a very substantial project. The rule-making project goes on for hundreds, if not more, pages in this area.

KD: Did you set up task forces, or how did you –

LS: Right, and we did, and it was all assigned out again. Along the way, we said we're monitoring, you know, on a weekly basis, the progress of the work. And then the other thing that came that sort of relates to it, if you don't treat this as a different topic, is Edgar. Electronics were coming on the scene at the time, in terms of filing and retrieving information by computer. And not to personalize it, other people have, that I gave a speech we'll say called the electric library, electronic library, and it was republished in the *Journal of Accountancy*, that sort of launched—it came from discussions internally—the idea publicly, and it began to be implemented more when I left, you know, than when I did. I think I, among other things, suggested that, largely, you subcontract the work to people who understood computers, and that was largely done.

On the theory that, ultimately, the thing that really would make integrated disclosure work, is the ability to get it instantly on the computer. And then you don't need a long prospectus if you can instantly just tap the information in. It was all launched. We knew there would be a period, as the computer spread itself throughout the country, and the more it spread, of course, the more you can justify relying on electronic disseminated information and not paper, at tipping balances. It's been moving that way ever since, but at least we spotted that at the time and initiated the rule making that resulted in the Edgar system.

KD: What were you able to initiate? At this point, there's still a lot of mainframe computers, not that many PC's.

LS: Yes. Just the idea. We got the project started during my tenure there and, you know, just got it rolling basically. Put it that way.

KD: There's some interesting issues that come up. I recall things about, if it's posted online, does that notification, you know, in a legal sense, in a technical sense, versus paper. Issues like that. Did you think through things like that?

LS: Yes, best we could, but we thought most of the things would be worked, just in general, much better for all sorts of reasons now. Paper is very clumsy. And there would be time, younger people would get used to them, but now we're already there, I'm sure, where people automatically, I certainly do, we're just moving away from newspapers. But beyond that, for our research, we go online now, certainly new. And that's just part of it. It's much easier.

KD: So that's something you handed off, I guess, when you were –

LS: Yes.

KD: Is there anything else that we haven't talked about that stands out as a landmark in your time as director?

LS: They also had Regulation D, private placements. They were the public offerings, but we also did major rule making regarding private placements as well.

KD: Yes. Tell me a little bit about that. The idea is that it becomes easier to do a private placement, less reporting, right?

LS: Yes. And also, to clarify the standards of what is a valid private placement and what is not.

KD: And what were those standards?

LS: Well, they were divided up. And the other thing is to put it in a systematic place. And that is somewhat elaborate and technical, but it made it more orderly. Instead of a series of no-action letters and interpretive devices where there was a great deal of judgment, inefficient judgment, it was placed in a rule so you could have a more exact response of when you could and when you couldn't. It's helpful. In fact, a general stepping back look at all this, a goal was to make this all accessible to every man [laughter]. When I was younger, before this time, it tended to be arcane and known to the priesthood.

Basically, some law firms would have a great advantage because they had histories of no-action letters in their files, and if you were a member of the public, you really had to go to what I call a priest, you know, for access. No one would think that's an ideal system. It really should be open to all. And the public should know the standards. Anyone

should be able to approach the Commission and comply with our rules. So that's why the older no-action letters and rule, at least interpretations and guides, things of that fuzzy stature were basically dumped and placed either in a rule, by and large, or an instruction to the rule or not. The rules would all be public. And anyone could go to them, and then now, on computer, you can find them even more readily. So we laughed. We said, "We're all working ourselves out of a job." [Laughter]. What you're supposed to do is make things so complex that only you can interpret them, and retain when you go back to private practice. We did the opposite.

KD: In a sense, it's like the paradigm shift where all kinds of things build up, and you have to – at some point, you reconcile them, and so you turn a corner.

LS: That's right. Filling up the attic – assign order to the attic. But this last point was a little bit different. It was intentional to make it also more transparent to anyone at this time.

KD: Right. And I suppose that would go along with the general fact that just ten years earlier, there was a much smaller public that was investing. It had grown significantly.

LS: Right. Yes, exactly, the entire country.

KD: What was behind your decision to leave the SEC?

LS: I've always been a believer that you do a job, and then move on and give someone else a chance. At some point, you wind up defending your own policies, and determinations and so forth. And I feel that sort of dogmatically, or doctrinally, that you do it for a time and then give someone else a chance. Pressure and that sort of thing.

KD: Did you consider other kinds of government work?

LS: No, not at that time. I was ready to return to private practice. And I think, for me at least, there was an advantage in doing both. I think each role informs the other. I think I was a better governmental official having been in private practice, having seen where they are, and vice versa.

KD: Yes. In what way? Tell me a little bit about that because it seems like the standard for the SEC, in a lot of ways, is straight out of law school, going to the SEC, and then –

LS: I think they always had a blend. We always had a number of people who have been in private practice and came over at all levels.

KD: Okay.

LS: It was never much of a sacrifice in our area, which is a highly-compensated area of securities lawyers to go into the Commission at some period of time, but you can generally return to a highly-compensated area, so I would not claim it was any sacrifice

to do it, particularly. If anything, it's an enormous privilege and advantage. But the advantage to me of having been in private practice was to, again, work on a number of different types of companies firsthand and understand them better. And also, probably psychologically to know that not all companies are bad. There's a converse there, you know. By and large, in most situations people are honest and try to do their best if you give them a chance and do it. And that was good. And, of course, all our clients are honest and well meaning.

I then learned when I went to the Commission, of course, that not everyone is like that [laughter], and that was also of value. You have to watch it. There are problems out there. You have to cut the cards. And so it was, I think, appropriate I didn't demonize private practice having been there. On the other hand, when I came back to the private sector, I learned to be very careful about, you know, the clients, and not everyone's honest, and there are problems out there. And other stress, many people, wonderful people, do very unfortunate things. So that was useful.

Again, in private practice, if you're fortunate in working in a great firm, you will be taught also standards of practice, how to do a job right, have that drilled in, and that was useful for me, I think. Sort of a general tool.

KD: You went to Gibson Dunn.

LS: Right.

KD: And did you specialize in mergers, that sort of thing?

LS: No. A broad field. I had admired that firm. It was a great firm. I liked the tone of it and so forth. And joined in the Washington office. My wife then had a wonderful job at the Smithsonian, but within a space of a year, they were sort of opening up. This was the period where out-of-town firms were opening up in New York, and Gibson Dunn, a great firm, was opening in New York, and the firm asked if I would go to New York to help start it up. We were a handful of people, at the time, there. My wife is from there. So I practiced there before, so it's natural. We went back and practiced. I was a partner there for the next ten years.

KD: Okay. How did your experience with the SEC influence the way you were working, other than sort of the philosophical viewpoint that you talked about?

LS: Well, the simplest way I knew about it, subject matter, a broader variety of subject matters. Mutual funds where we started. I wound up advising a number of mutual funds and advisors, or boards and directors, mutual funds. That's an interesting area, and I would not have had that before. It's an area of expertise I hadn't had. And again, through a combination of my earlier experience and the SEC, I guess I characterized by just a variety of subject matters, good or bad, I always worked on an extraordinary variety of types of matters.

KD: Different industries, different kinds of financial reorganizations?

LS: Yes. Transactions, advisement types, you name it. I worked across the board. And so it was interesting. And then one interesting feature, I guess, at Gibson Dunn was that we represented the first Chinese company to make a public offering in the United States, public, in '92. And that was a great adventure. We went to China and worked on it. It was, obviously, not public at the time we did it, but we did our diligence, talked to various governmental administrators—it was an automobile manufacturing company, minivan. And visited the plant and talked to them. It was absolutely absorbing. It was glamorous. In the end, we went to a closing dinner, and being escorted – with our limousines being escorted by police through Beijing, and we're invited over to their White House and met Jiang Zemin, the head of China, the next day, who was very interested in things like electronic trading here, the Chicago trading pit, very intelligent man. And then having done that – we did several more China deals because people want to find the people who've done the deal before. So the remainder of my time there was working on, to a substantial amount, deals from China. My partner, Sandy Rand, who's currently our ambassador to China, was sort of the Hong Kong partner, sort of the Wall Street-ish partner on those deals, so that was fascinating.

KD: Had you had much experience with international affairs in –

LS: Oh, someone said, I remember even in law school, one of my professors, Yan Doy, said, "You could practice international law in the middle of a corn field in Iowa." [Laughter].

You know, there are many aspects of international matters that interlace, and sure, either domestic companies financing abroad or having foreign operations or vice versa would always be around in some form.

KD: Right. I guess the question is how much was this an issue for corp fin at the time? Was it something that –

LS: It was always an issue because it's a tough area intellectually. Because if you ask for the same amount of information from a foreign company as a U.S. company, it is unusual for them in their own country, and over-burdensome and can raise competitive issues. On the other hand, from the investing point of view, there is no reason not to want the same information from a foreign company, so it's a tough area. And there is no automatic right answer. The main crunch comes in the accounting area, and the Commission is still working on those issues. We tend to make some modifications toward it, international structure, but the core of it remained the same as a practical matter, the information that had to be provided.

KD: And that's fairly early on too. The international issues didn't really rise to high profile.

LS: They were always around. Of course, there would be an interest in it because, frankly, from a business point of view, the easier it was, the more deals would be done here, people make money. Nothing wrong with that, you know, so there was always an interest in that. But it goes in peaks and valleys.

KD: Something else I just want to touch on is, you left Gibson Dunn, and you went into Prudential Securities. Very interesting circumstance.

LS: Yes. They had had some issues with a long series of limited partnerships, so I was asked to come in and be the general counsel there.

KD: A long series of –

LS: They had had problems with some limited partnerships. And it was an elaborate process set up, a remedial process to pay back people who claimed to have been adversely affected, which was part of it. But there were a million other issues. It was a wonderful time, but very demanding being the general counsel of a broker-dealer like that. Very broad operations.

KD: So were you looking at how to set things right again, I guess? Is that –

LS: Sure, as is always the case, right? And there would be particular attention at that time to that. So anyway, I admit it was a very, bit of a demanding job. To give you an order of magnitude, there are probably a hundred lawyers on the staff, so just the administrative part would be significant. And then there would be always, like any high-profile company, high-profile issues to grapple with.

KD: That's a lot more people that you're managing than in corp fin, I suppose. Right?

LS: I have to add—it was more lawyers. I think, I'm not even sure how many. We may have had that many, I'm not sure. It was just different, you know. It was just different. And it was a privilege for me. I also taught at Georgetown Law School when I was there for several years. So personally, it was interesting to have worked in private practice in the government, on the inside counsel job, so I saw all that. And each has its advantages and its disadvantages, of course.

KD: Did you move back to D.C. then for a job?

LS: That was just here.

KD: Okay. Well, is there anything that we haven't touched on?

LS: I don't think so. I think those were the marquee features.

KD: Okay. Great. Well, thanks very much. I appreciate it.

LS: Sure.

[End of Interview]