Securities and Exchange Commission Historical Society
Interview with Barbara Lucas
Conducted on June 4, 2012, by James Stocker

JS: This is an interview with Barbara Lucas for the SEC Historical Society's virtual museum and archive of the history of financial regulation. I am James Stocker. Today is June 4, 2012. We're talking at Luness Partners' office in New York City. Ms. Lucas, thank you very much for talking with us today. Just to start off, where were you born, and where did you grow up?

BL: I was born in Brooklyn, New York, and I grew up in the New York Metropolitan area.

JS: Did you always know that you wanted to be a lawyer when you grew up?

BL: Strangely enough, yes, I did. I think it was probably watching *Perry Mason* in the fifties, always seeing him solve his case in the last five minutes of the show, but I always knew I wanted to be a lawyer.

JS: Were either of your parents lawyers or businessmen, or in finance?

BL: No, my father was a dentist; my mother was a housewife. My parents thought that I would become a teacher, because that's what women did at the time. They were surprised when I went to law school.

JS: Where did you go to college?

BL: I went to Cornell University.

JS: What did you study there?

BL: I was an English major and a government minor.

JS: But you were already thinking about studying law?

BL: Yes.

JS: Did you have a specialty in mind? Did you imagine that you'd be working on finance and securities issues?

BL: I thought I was going to save the world. It was the sixties. I never imagined myself representing big corporations or being involved in finance.

JS: Where did you go to law school?

BL: I went to American University.

JS: In Washington, DC?

BL: Yes.

JS: While you were there, did you take courses that specialized in securities law?

BL: Never. (Laughter.) I took all of the clinical programs, volunteering in prisons, and helping tenants in landlord-tenant court. I had no understanding whatsoever of business or finance and, at the time, no interest in it.

JS: Did you have any law professors that maybe influenced your career path?

BL: It was completely haphazard.

JS: As it is for a lot of people, I guess. Tell me how you got from law school to the SEC?

BL: When I finished law school, my first job was clerking for an appellate judge on the DC Court of Appeals and, of course, by definition, that's a temporary job. You do that for a little over a year. As I came to the end of the clerkship, I really had no concept of what I wanted to do. But I still believed that I wanted to save the world.

A friend of mine who had clerked for a judge on the same court had joined the SEC. He called me one day and he said, "I've made an appointment for you; you have an interview next Wednesday morning. Be there at 10:00. They just lifted a hiring freeze and you've

got to be there." I said, "I don't know what you're talking about. I don't even know what this agency does."

We had lunch. He gave me the five-minute overview. I walked into the Commission, and I interviewed with Alan Levenson, who was the director of the Division of Corporation Finance. For no particular reason, other than fate, I guess, he hired me that day. When he did, he looked me in the eye and he said, "I'm hiring you, and I want you to come here, and I want you to be a star." I said, "Oh, my goodness. Alan wants me to come here, and he wants me to be a star. I've got to do it." That was how I got there.

JS: What year was that?

BL: That was 1973.

JS: Just to go back quickly to ask you about your experience in the appellate court in DC. That must have been a very interesting time to be working in the court in DC.

BL: It was a wonderful time to be working in a court. First of all, being in an appellate court is a wonderful education, because any decent appeal can be decided either way. The judge I worked for would participate in the panel of judges deciding a case after the oral arguments, but she would never tell me what the panel had decided. So my job was to go off and draft an opinion without the benefit of knowing what the court had decided. It

was a wonderful way – it was a very luxurious way to study the law and to see how courts worked.

It was also the era of public demonstrations. We had a lot of cases coming out of the mass arrests in the District of Columbia – people wanting to have their records expunged, people challenging the constitutionality of the process by which they had been held in the baseball stadium for days on end. One day, the judge called me to come stand and look out the window with her, and we saw the Watergate defendants who were being taken to their arraignment. It was a very charged political time and a very wonderful experience for a young lawyer.

JS: Just to get back to the SEC now. You started in the Division of CorpFin. What was your introduction to that like? Was there any training or did they just throw you on cases?

BL: They just threw me in. I was in the branch that reviewed real estate tax shelters, which were very big at that time, and which were offered by people who thought they were in the real estate business and not in the securities business. There were a lot of conflicts with our issuers. There were a lot of offerings that wound up being referred to Enforcement. It was an interesting way to learn about the limits of disclosure versus merit regulation.

It was an interesting way to see how the division operated when it didn't like what was being proposed to be offered to the public. In terms of training, none; I learned on the

job. Somebody handed me a 10-K; it must have had 300 pages in it, and I said, "What am I supposed to do with this?" He lifted it up to his ear, and he ran his thumb over the pages. He said, "If it sounds good, let it go." That was really the way we operated.

JS: Do you think that most of the people within the division had the knowledge of finance to be able to go through these types of forms and understand them?

BL: I gathered – I think I probably knew less than anybody else, because I did not study securities law and I did not study finance. I think most of the people at the Commission were there because of an interest in finance, but did anybody know what they were doing? Not really.

JS: So how long did you work on these real estate tax shelters?

BL: I was in the branch for about a year.

JS: Then what was your next step within the SEC?

BL: Then I was hired by Irving Pollack. He had recently been appointed as a Commissioner, and I was his first hire, as a legal assistant. It was just a wonderful opportunity to work with a man whose voice still echoes in my head.

JS: Did you switch over to the Division of Enforcement at that point?

BL: No – he was a member of the Commission, so I became his legal assistant. By that time, Stanley Sporkin had replaced him as the Director of Enforcement. I was working for Irv. The thing about working for Irv was that he had this very unusual definition of the job of a legal assistant. My job was to learn from him, and his job was to teach me and other young lawyers at the Commission, because he was creating a cadre of people who would then go out and represent the public interest in their private practices.

I was in a uniquely gifted position, because I worked for him for about a year or a year and a half in that position. After that, he started rotating legal assistants for very short stints. He brought people in from the regional offices so that he could share the wealth so that more people could have this experience. I was the one who had him the longest, and it was one of the most glorious experiences of my professional life. It was just wonderful.

The whole world would come to his door. The things that were very significant that were going on in those days – we were unfixing commission rates after years of contentious hearings and rule proposals. I can remember the officials from the New York Stock Exchange coming to the building to lobby. They had their big stretch limos and they made no progress with Irv whatsoever.

He taught me a very puritanical ethic that was characteristic of the Commission. He would never allow anybody from the regulated business to take him to lunch. Felix

Rohatyn, who at that point was working on issues coming out of the financial problems of New York City, would come to the office and he would stay for lunch. Our secretary would run downstairs to the grocery store and buy a loaf of white bread and take old file folders and turn them inside out and use them for placemats.

We had a jar of generic peanut butter that we would use and I was always a part of it. I would always sit and listen and Felix Rohatyn would come. He would take a piece of yellow paper and he would show in a diagram how to solve the energy crisis or how to restructure Lockheed or what the solution to New York City's problems were. It was just an extraordinary room to be allowed to be in.

JS: The visitors to his office must have been quite surprised to see this sort of treatment in Washington. Or did they just sort of expect it? His reputation preceded him?

BL: Everybody knew Irv and everybody knew what he was like. People had tremendous respect for him, and personal friendship, even though they understood that there was a limit to how much that meant in terms of changing his position on an issue. There was a wonderful man named Sam Lyons, who represented the New York Stock Exchange for many years. He knew that Irv's position on New York Stock Exchange issues wasn't the same as his. He would come and with great affection they would spend time together. Anybody who was significant in the securities industry was in that office. So it was just a learning experience, beyond any that I've had since, and one that I'll always treasure.

JS: Irv Pollack during this period became involved in the Watergate investigation, too, right?

BL: Irv was involved in Watergate in several different ways. He had been at the Commission when Brad Cook, who had been Chairman, had perjured himself in front of Congress regarding whether or not the White House had ever tried to interfere in the Vesco investigation. Irv had counseled him to resign and to own up to what he had done. Irv also was in the room when the call came from the administration with respect to halting the Vesco investigation. Vesco was one of the big criminals of that period in time. Irv and Stanley took the call together and made it clear that there was no way that they were going to subvert an investigation.

Irv subsequently had to testify in the criminal trial of John Mitchell, who had been part of the Committee to Reelect President Nixon, and who at that point was the Attorney General of the United States. Mitchell was tried twice; he was tried once in New York City and he was acquitted. Then he was tried again in Washington and he was convicted. Irv testified both times, but it was difficult for him to see Mitchell acquitted the first time, particularly when other people, including Brad Cook, had paid a very substantial price for perhaps lesser crimes.

The other interesting sidelight on Irv's involvement in Watergate came from the fact that he had been appointed to the Commission by Richard Nixon. He believed that he had been appointed by Nixon because of his reputation for integrity and because Nixon needed to show that he cared about integrity at that moment in time. It later came out

when the Watergate tapes were released that Irv and Stanley had earned a mention in those tapes. Richard Nixon had referred to them as "those Jew boys at the Commission," and Irv took sort of a perverse pride in that fact. It was important to him that he had stood up to the White House.

JS: That must have been quite a shock, but I guess a source of pride, too. After your time as Pollack's legal assistant, where did you go next within the Commission?

BL: I went back to CorpFin, and I was a special counsel, first to Alan Levenson and then to Dick Rowe, when he became the director. That was in the mid-to-late seventies. The things that the division was very involved in at that point were the disclosure issues that went with the discovery that dozens and maybe hundreds of public companies were bribing foreign government officials and making illegal campaign contributions in the U.S.

So we developed an amnesty program, so that companies could come in before they were found out by Enforcement. They could confess to their wrongs and they could negotiate some disclosure language and we did have, I think, several hundred companies eventually came in to do that. Of course, that eventually led to the enactment of the Foreign Corrupt Practices Act, which we were heavily involved in.

JS: Now on the disclosure program, Stanley Sporkin is often given credit for instituting this program or initiating it. Of course, he was the Director of Enforcement. What role was CorpFin playing in this process?

BL: We were the ones who were responsible for processing the disclosures, so it was really a joint effort of the two divisions. We worked very closely with Stanley. The ones who didn't come in for the amnesty program would end up being the defendants in enforcement cases to the extent that they were caught, and we worked together to come up with disclosure. It was a time when there was a lot of debate about what needed to be disclosed, because there were people who thought and I guess still think that the securities laws only require disclosure of matters that are economically material.

In the vast majority of cases, these payments were economically immaterial. But the Commission at that point agreed that there were things that were qualitatively material, and that there should be disclosure on these matters. Not that it was without controversy. It was a difficult position for the Commission to come to, and in the many discussions that took place at the Commission table, there were commissioners who really struggled with the concept and eventually came around to it.

JS: So that was something of a contentious issue at first?

BL: It was very contentious, but it was also – and I think this is interesting historically in light of what happened to some of the Commissions that followed – it was a truly collegial

Commission when Ray Garrett was Chairman, and Irv was on the Commission, Phil Loomis was on the Commission, Al Sommer was on the Commission. These were people who had different philosophies and different political views, but they respected each other so much that they would give deference to each other's views, and do their best to come to some consensus judgments, and they did that. With Foreign Corrupt Practices, that was certainly one of the issues that was difficult for them.

JS: Were you all surprised by the number of companies that ended up coming forward under the disclosure program, or did you expect that there would be massive disclosure?

BL: I was personally shocked by it, that it seemed to be endemic to the way American companies were doing business abroad. Maybe it was because I was young and naïve, but it was shocking to me.

JS: Well, it turned out you got a chance to save the world after all, right?

BL: A little bit.

JS: A little bit, maybe. Did you work closely with the Department of Justice on that, or was this something that the SEC was mostly doing by itself?

BL: At least the work that I was doing didn't involve the Justice Department at all. It was all initiated by the Commission. I presume that Enforcement must have had more to do with the Justice Department.

JS: Did CorpFin contribute to the debate over legislation that eventually led to the passage of the FCPA or was that something that Enforcement was working on with Congress?

BL: No, it was an interdisciplinary group, interdivisional. We all sat together and drafted the language and answered the congressional questions that came back, and it was clearly the effort of a large group of people at the Commission.

JS: You also worked on the Task Force on Corporate Governance during this period, right?

BL: Yes, I did.

JS: Can you tell me a little bit about how that Task Force came about?

BL: Well, it started out being something much smaller. It started out being one of the periodic reviews of the proxy rules. In the process of doing that, we started to look at some of the traditional corporate governance issues – what an independent director is, how you define independence. We looked at board composition and whether and to what extent the Commission had jurisdiction to dictate what the composition should be. Then we looked

at some of the broader issues, like who owns the proxy machinery? Is this something that shareholders are entitled to use?

We put out a very broad concept release. This must have been in ’76 or ’77, and we got back what at the time was a historic number of public comments, including my personal favorite, which was something to the effect that “Kid staffers and Communists should all go back to Russia where they belong.” Something like that, which I hung on my wall for a while. At about the time that we were looking at these issues, Harold Williams became the chairman of the Commission, and he was somebody who had an abiding interest in corporate governance.

He suggested to us that we make it an even bigger project. He suggested that we hold hearings around the country, which I think at that time had never been done by the Commission before. We had hearings in four or five cities around the country. We had input from hundreds of people, some of whom were quite horrified at the notion that we were messing around with governance at all.

JS: When you say some people, do you mean people in the corporations, on the boards, or were these just members of the public who were coming out and were very upset about this?

BL: The people who were the most upset were the representatives of the public companies. People like the American Society of Corporate Secretaries that spoke for large numbers

of public corporations, the Chamber of Commerce kinds of commentators. Some of the bar associations, at the same time ALI-ABA was doing a big corporate governance study, and they were looking at parallel issues and in some cases agreeing and in some cases disagreeing with the Commission.

We had a lot of academics who weighed in on the questions as to whether there was a federal corporate law in existence, whether this was something that we had the power to address, whether this was something that should be left to the industry and to the self-regulators. What was so interesting about it is that all the passion that was expressed in the late 1970s was expressed again in a much later round that the Commission initiated. In fact, the most recent round of proposals on corporate governance elicited a very similar reaction to the one that we had, way back when. These are issues that people care passionately about.

JS: When you were formulating these new concepts, were you looking at the way that other countries around the world organized their business sectors, or were you just looking at the American sector and thinking, "Well, how could this be improved?"

BL: We really didn't look comparatively. I think we might have done a little bit of research about Germany, which has a very interesting approach to governance issues, but mostly –

JS: They have workers on the board, right?

BL: Yes, they identify the constituencies that are affected by board actions and then require that they be represented. Mostly we were looking at the literature that related to the U.S. industry. We were more parochial then and less international. That was the way the world was in the late seventies.

JS: These two rule-making projects, were they actually put out by the Task Force on Corporate Governance or was that formed afterwards?

BL: The proposals were put out by the task force.

JS: In 1979, you ended up leaving the Commission, and I believe you ended up after that at the CFTC. Can you tell me the story of how you moved from the SEC to the CFTC?

BL: Sure. The CFTC had been created in 1975, and it had gotten off to a somewhat rocky start. It was not perceived to be much of a regulator. A man named Jim Stone, who had been the insurance commissioner in Massachusetts, came in to chair the agency in 1979. He was reaching out to potential staff members in the hopes that he would be able to change the way the agency operated. He came to me, through Irv Pollack actually, and asked me to be the director of something called the Office of Policy Review.

JS: What did that office do?

BL: Well, it's a good question. The general counsel of the agency, under the Commodities Exchange Act, worked specifically for the Commission and not for the chairman. So when the chairman wanted a project done, and he asked the general counsel to do it, the general counsel would say, "No." So my position was to be his lawyer, and when he asked me to do something, I said, "Yes." That was what that position was.

JS: Could you tell me a little bit about the difference in culture between the SEC and the CFTC, at least at this time?

BL: Oh, it was completely different. The SEC had always been very puritanical. We had metal desks and files piled up in the hallway and strict ethics rules. The CFTC was much cozier with the industry that it regulated. The Chicago Exchanges had a tremendous degree of access and clout at the Commission. The Commission didn't perceive its mission in the same way. At the SEC, we knew we were there because we were concerned about investor protection. At the CFTC, the futures markets existed for the purpose of shifting risks from basically insiders who had information that enabled them to be on the right side of trades, and shift that risk to outsiders.

I once made the mistake of including the phrase "investor protection" in a memo that I wrote, and members of the Commission gave me a very hard time about it. "No, that's not our mission; that's not what we do." At the time, the only prohibition in the statute against using inside information applied to employees of the CFTC. It didn't apply to anybody else in the futures markets, because the whole genesis of those markets was that

a big industrial user of a commodity would know what the demand was going to be and be able to profit from that information.

JS: How did they justify this? I mean, did they just claim that they were representing sophisticated investors, or how did that work?

BL: The people who would otherwise be considered investors had the dirty name of "speculator," and speculators don't have to be protected. In fact, there were not at the time that many individuals who were participating in the futures markets. Of course, the markets were changing very dramatically at that point, because financial futures had only come into existence in 1975, 76, so the nature of the markets, and the nature of the instruments being traded, changed very dramatically in the late seventies and thereafter. The New York-based investment and commercial banks became major players in commodities. Commodity pools became very significant. So there was a lot that was changing, but the traditional way of thinking about futures was in a very laissez-faire manner.

JS: So you were the director of the Office of Policy Review, but I also understand that you were the chief counsel to the CFTC's Division of Enforcement for a while, too. Was that concurrently?

BL: No, that was later.

JS: So you switched from one to the other. You mentioned some of these issues that were important at the time, like commodity pools and stock index futures. Could you tell me just a little bit about these issues and what you were doing on them?

BL: Every contract that's traded on the futures exchange has to be approved by the Commission in advance, and the whole idea that there could be futures contracts based on securities created all kinds of interesting issues as to potential manipulation, the effect of activity in one market on another, and raised all kinds of jurisdictional issues between the SEC and the CFTC. Several times over the years there would be accords between the two agencies, and then the market would move past the accord, there would be some new instrument developed, so that was something that was ongoing.

The growth of commodity pools was a jurisdictional issue, because there was the question whether they had to be regulated by both the CFTC and the SEC, because a pooled investment vehicle is an investment company. So there was dual regulation, but there were arguments over that. There were arguments over virtually everything that the two agencies did.

JS: I know there was one significant issue was the question of stock index futures and who would regulate those. There was also sort of a jurisdictional clash between the CFTC and the SEC on this issue, too, right?

BL: There was a big clash between the two, although ultimately the SEC agreed that anything traded on the futures exchange should be regulated by the CFTC, and anything traded on the securities exchange should be regulated by the SEC. With stock futures originally, they had to be based on a broad index, and that was supposed to be the protection against manipulation based on the underlying assumption that if you had a broad enough index that was supposedly not going to happen.

That's the way the agencies dealt with that at the beginning. Ultimately, the indices became much narrower, and questions of manipulation did arise. There were differences in the definition of manipulation under the two statutes, where it was virtually impossible to prove manipulation under the Commodities Exchange Act. So there were continuing jurisdictional issues.

JS: Was the issue of control person liability also important at this time?

BL: It was an issue that I got involved in when we were revising the statute, and we were looking to see what protections the securities laws have that the commodities laws didn't have. The commodities laws didn't have a controlling person liability provision. In utter naiveté and innocence, I said, "Well, let's put one in," you know, "What's the big deal? It's always been the case in the securities law." So we stuck it in the legislative package and World War III erupted.

It was one of the strangest reactions. I think in the securities industry you think of controlling person liability as one more arrow in the quiver. It's not in and of itself that significant; it's pled in some cases in addition to other bases for liability. This was total war, and we wound up giving in on it. There was no way we could get it in the statute.

JS: Who was arguing against this? Was it the commissioners, or was it the people in Congress, or who?

BL: It was the industry; it was the Congressional staff people. We were regulated by the agriculture committees that had a different sensibility than the banking and finance committees that the SEC had dealt with. So it was a big fiasco.

JS: At the CFTC, did you generally observe that there was a good relationship between the staff and the commissioners or were there tensions at times?

BL: Well, there were certainly tensions. There were factions on the Commission and so there were also matching factions, parallel factions, on the staff. It was a contentious place to be in those years.

JS: So a little bit different than your experience at the SEC?

BL: Very different.

JS: So you spent a few years at the CFTC, and then you moved onto Citicorp next, is that correct? That was in 1983?

BL: That's right.

JS: Can you tell me the story about how you got recruited by them, or how you ended up getting the position?

BL: They were looking for somebody who had experience in securities and commodities, and also municipal securities. I was one of the only people in the universe at that time who had the combination of experiences that they were looking for. For me it was coming home. I had grown up in New York, and I was very happy about coming back to New York.

JS: What was your title? Were you general counsel at that point?

BL: At the beginning, I was the general counsel of something that was called the Money Market Division. I subsequently became the general counsel of the investment bank, which included the fixed income derivatives, structured finance, futures, municipal securities, and foreign currency operations of the organization. In the early years, I was responsible for those activities in the United States. Then at some point in time, I became responsible for those activities in the OECD countries. It was a big job and an exciting

job at a time when what banks were doing in the securities business was changing very dramatically.

JS: There were obviously a lot of different issues that you were working on, but just maybe briefly, can you tell me what those changes were that were going on in commercial banking?

BL: Banks were fighting very hard to get rid of the Glass-Steagall Act, which had separated investment and commercial banking from 1933 on. They were proceeding on a number of fronts, working with regulators to carve out activities that were considered incidental to banking, whether or not they involved securities, working with the Federal Reserve to take advantage of what some people called a loophole in the statute. Banks could not be affiliated with a company that was principally engaged in certain prohibited securities businesses. So by inference, they could be affiliated with somebody who wasn't principally engaged in those businesses.

We were able to get Federal Reserve to act on what we called Section 20 applications and expand those securities-related activities. There was a lot of litigation going on in those years and also a lot of attempts to get legislation through Congress. It wound up taking decades to get the legislation passed, but all through the eighties and nineties, before the legislation was passed, there were major initiatives that were successful.

JS: Let's go back. You mentioned that the Federal Reserve changed its rules to allow bank holding companies to underwrite some of these different types of securities, right? I think this was in 1987, is that correct?

BL: The first orders were in 1987, yes.

JS: How did the Reagan administration feel about this? I mean, did you have sympathetic allies there?

BL: We really didn't work with the administration, although in Congress we had more support from Republican members of the banking committees than from Democrats. But it wasn't strictly speaking a partisan issue. When you're choosing between the commercial banking industry and the investment banking industry, it was a source of lobbying income for a lot of members of the House and Senate for a very long time. The committees in both houses that dealt with these issues were the largest committees in either house. Everybody wanted to be on them. Everybody wanted this fight to go on forever and ever. So it was interesting. It was an interesting way to learn about the legislative process.

JS: Who were the groups that were arguing against changing these rules? I mean, who was for the status quo?

BL: The people for the status quo were the investment banks and the trade associations that represented them. So most of the litigation was undertaken by what was then called the

SIA, the Securities Industry Association, and the other organization that litigated quite a bit was the Investment Company Institute, because the same fight was taking place in the asset management business as in the brokerage industry.

JS: What sorts of arguments were they making against changing the rules?

BL: The argument was that the reason for Glass-Steagall was to prevent subtle hazards that created dangers for the banking system. The other arguments had to do with the riskiness to banks of securities-related activities. Those arguments really were not valid arguments, because a lot of the things that were permissible for banks, like buying and selling loans, were actually riskier than buying and selling debt securities, because at the time loans were illiquid, whereas debt securities were highly liquid. So it was a bunch of arguments that really had been bypassed by changes in the industry and the passage of time.

JS: They were making those arguments, but from the perspective of commercial banks, the investment banks were just trying to protect their own turf. Right?

BL: Of course, it was a competitive issue.

JS: So in 1987, the Federal Reserve started to change the rules a little bit. That was also the same year that the S&L crisis happened. Did that have any impact on efforts to break

down these walls between commercial and investment banking? Did it slow it down at all?

BL: It actually didn't, although you might ask why that was the case. Because one of the differences in the law that applied to S&L's was that they were allowed to trade anything, but for some reason it never played into the political debate on Glass-Steagall.

JS: Just no one thought of that argument?

BL: I think that there was a perception that the S&L crisis really was a result of bad regulation and lax regulation, and so it didn't flow over into the Glass-Steagall debate.

JS: You mentioned that the commercial banks used a series of court cases to challenge some of these rules. Could you tell me a little about some of them?

BL: One of the big cases involved Security Pacific, which at the time was one of the major banks. The question was whether they could take mortgages that they either originated or bought and sold and package them into mortgage-backed securities. That was something that the bank regulators had permitted banks to do for some period of time, and the court that considered the Sec Pac case agreed that that was permissible.

We had a similar case that Citi was involved in out of a Delaware State court, where we packaged up mortgages, not into pass-through securities, but into CMOs – securities

where the cash flows didn't exactly match the underlying mortgages. That was considered legally to be a different issue, because it wasn't a mere pass-through of the underlying mortgage cash streams, and so that required more litigation. We were successful on that.

JS: As I understand it, the Security Pacific case was originally rejected by a court and then that was later overturned, right?

BL: Yes, that's right.

JS: Then in the news reporting at the time, this Delaware case was seen as a challenge to that ruling.

BL: It was, yes.

JS: So that was sort of the strategy at the time?

BL: Yes. It was a lot of fun, too.

JS: So relations between, say, the people at Citicorp and the SIA were not very good at this time, were they?

BL: We were all doing business with each other, but there were certainly litigation going on and so if you were choosing a law firm to represent you in a commercial bank, it was unlikely to be a law firm that was handling the litigation on behalf of the SIA in a Glass-Steagall related case. But, you know, we were all the major players in all kinds of businesses, and doing business together.

JS: I understand that the Congress got a little bit interested in the Delaware case, as well. I saw some news articles in which John Dingell had said that he wanted to have a criminal investigation of Citicorp. Maybe he was exaggerating a little bit.

BL: John Dingell did say things like that from time to time, but there was no such investigation.

JS: Now was there any thought during this period that the end of Glass-Steagall might be near, or that it might be possible to push for legislation that would change that, or were you not so ambitious at the time?

BL: We always believed that it was inevitable that it would be repealed, and there were several legislative sessions where repeal legislation passed one house and not the other. We knew it was close, we just didn't know when it was going to occur. There was also a growing level of comfort that the banks could do what they wanted to do, what they cared most about doing, without changing Glass-Steagall. The one thing that banks couldn't do

with Glass-Steagall in place was do equity underwriting and trading and that's something they got into in a much bigger way, later on.

JS: At the end of the nineties.

BL: Yes.

JS: During these years, the movement to underwriting securities was not the only change going on in commercial banking. This was also the era in which derivatives and structured finance began to take shape in their modern form. Can you tell me a little bit about how that looked from the perspective of Citicorp?

BL: Yes. Citicorp was one of the early movers in those businesses and really was the training ground for the people who went out and ran those businesses all over the Street. At the time they seemed like the most wonderful innovations. The derivatives business was a way for risks to be shifted. If you were an operating company and you had exposure to foreign currency fluctuations because you'd issued debt denominated in yen, and you weren't in the business of managing yen risk, you could enter into a swap with Citi or one of the other banks. It made a tremendous amount of sense, and there was a tremendous appetite for these products in the interest rate arena, and also in currencies, and then later on, in commodities and credit derivatives.

We thought we had created something of great value, something that really served customers' purposes and that created great business opportunities. The same thing was true with structured finance. We developed the methodology to bundle up different kinds of assets. At the beginning, it was mortgages and credit card receivables and car receivables. Ultimately, it was assets of every description, including things as esoteric as taxi medallions, that you could package up and you could sell to investors and by doing that you were able to free up the capital so the bank could then relend money. It was a great stimulus to the mortgage business and to all kinds of consumer lending businesses, and we were very proud of our ability to do this. I never would have guessed that these instruments would be at the center of the financial crisis.

JS: Did these new instruments come under much scrutiny at this time, either from the Congress or from the SEC or from other organizations?

BL: They came under scrutiny in the sense that developing these products raised new accounting issues and tax issues. There were very specific, esoteric SEC issues because these things were done as registered securities, but there were funny investment company issues, whether you were creating an inadvertent investment company, things like that. But nobody looked at them with a view to preventing them from being sold. They were regarded as positive developments economically.

JS: I know that during the nineties, the FASB dealt with this issue. The big question was, "how do you account for this in the books?" not whether or not you should actually have them.

BL: Right, that was the focus. There was also one major enforcement case in the nineties, and that was against Bankers Trust. It was an enforcement action brought by the SEC, the CFTC, and the Fed, and the New York State Banking Department. It came out of Bankers Trust selling very exotic derivatives to its customers. It based the rates on something called LIBOR cubed or LIBOR squared, and so you had a reference rate that didn't correlate to any risk that anybody actually had. That was so highly leveraged that when it went against you, it caused major losses. That was the big black eye for the derivatives business in that period of time.

But to answer your question, no, nobody tried to prevent these instruments from being developed. They were viewed by bank regulators as being part of the business of banking, because if a bank had the intrinsic right to set rates on loans and to set rates on deposits, then it was also viewed as incidental to that power that it could do interest rate derivatives, and the same analysis took place on currencies, on credit, and on other categories of derivative instruments.

JS: I'd like to come back to the subject in just a minute, but first let's talk a little bit about your career in Citicorp. What year did you end up leaving the organization?

BL: I left Citi in 1991, and then I went to Cadwalader. I was a partner there until 1997.

JS: What did you do in 1997?

BL: In 1997, I decided I had had enough of finance, and I went off and I pursued other interests, including fiction writing.

JS: Did any of your fiction concern finance? Any financial thrillers?

BL: Absolutely not. (Laughter.)

JS: Eventually you came back into the sphere of finance, and you began consulting in risk management services? That was in 2003, I understand?

BL: Yes.

JS: What sorts of issues did you work on there?

BL: From 2003 until 2010, I worked with a company called Capital Markets Risk Advisors that was a boutique risk management firm. We worked with different players in the financial services businesses, asset management companies, hedge funds, broker dealers, pension funds; all kinds of market participants, in reviewing their risk management and helping them improve their risk management.

I also worked in litigation support, as an expert witness in litigation that raised issues coming out of trading businesses, sometimes with respect to things like whether the risk management used by one of the participants in the lawsuit was comparable to best practices – a whole range of issues. In 2010, I left that firm, and with my husband, Richard Nesson, we created Luness Partners. We do risk management and compliance consulting. We also do litigation support.

JS: You took some time off in the late 1990s and early 2000s and then came back into the financial services industry. Did you notice any changes, maybe in the culture of the industry or the ways things operated? Or was it business as usual?

BL: I think it got a little bit more aggressive. There was more of a Wild West atmosphere, I think, as the result of the growth of hedge funds, which typically have less in the way of controls than the older, more established investment banks and commercial banks. There are a lot of market participants who might have been very savvy traders, but they didn't know very much about risk management. They didn't know very much about compliance. Most of them were unregulated. At the same time that there was a Wild West atmosphere in the markets, the markets were becoming much more complicated. You had instruments that were of a complexity that had really not existed earlier on. I think a lot of that played into what sadly happened in 2008 and afterwards.

JS: Did you ever think back and wonder, "Well, did we create a monster by pioneering all these different types of financial instruments?"

BL: I've asked myself that question because so much of my life's work involved derivatives and structured finance and the repeal of Glass-Steagall, all things that have been pointed at as having some role in the crisis. I think we laid the foundation, but I don't think that those instruments or the repeal of Glass Steagall intrinsically caused what happened. I think what caused the results that we all saw was a combination of things.

One was that the products were so complicated that I think nobody in the institutions selling them really knew what they were doing. I think the money was so big that it became impossible for a control person to say, "No." In my days in banking, you could not do a transaction or a deal if you didn't have the credit signoff, if you didn't have the legal signoff, if you didn't have the accounting signoff. I think the pressures mounted, so that the control people were really bowled over in the 2000s. Had they been listened to, I think a lot of the problems would have been obviated.

JS: Have you worked much with the SEC over the last ten years or so since you came back in to the industry?

BL: A little bit. I've done things like being a special examiner after a settlement of an enforcement action. I'm not so much representing clients in front of the Commission any more. I do create compliance programs for clients. I have some sense of the

Commission, but it's not as immediate as when I was there, and when I was bringing clients in on a regular basis.

JS: I wanted to ask you whether you had noticed a change in the Commission from back in the seventies when you worked there to today.

BL: What's obvious just from reading the papers is that the collegiality that was so prevalent at the Commission is a thing of the past. It has become so common for Commissioners to speak out publicly about their dissent on decisions. There seems to be a great lack of civility. The Commission certainly has been under tremendous fire. When I was there in the seventies, we were always regarded as the best agency in Washington, and it was an agency that prided itself on its independence. Whenever there was an attempt by an administration to effect policy, the administration was rebuffed.

People took tremendous pride in being part of the Commission, tremendous pride in having that on their résumé for the rest of their careers. I think sadly that some of that has been lost. I don't know whether it can be regained. It was such a potent tool, and it really changed the way securities laws were administered in this country, because you had a cadre of hundreds of alumni who went out and really felt a special obligation to uphold these laws and to make sure that their clients did the right thing. That was a wonderful tool.

JS: That's an interesting observation, because so many young people do go and work for the SEC for a few years before staking out on their own or going into the private sphere. I think it's a very common experience. Do you think that at the time you were there, there was a conscious effort by either the members of the Commission or the staff members to cultivate younger staff members to go off and embody these values in their own careers?

BL: It was very explicit. The man who did it in the most effective way was Irv Pollack, but other senior officials of the agency did the same thing. As a result of that, the voice that I hear in my head to this day when I have a difficult decision to make is Irv Pollack's voice. The question I ask myself is a variation on the question that he and Stanley taught young lawyers to ask. They said, "Always ask yourself how you would feel if what you're doing today was on the front page of the *Wall Street Journal* tomorrow." The question I ask myself is, "What would Irv and Stanley think if I make this decision the wrong way?" It's been a very potent voice in my head. I feel very lucky that it's there.

JS: I'd like to ask you about another subject that you've become involved with over the last few years – microfinance. Can you tell me how you became interested in microfinance?

BL: Now you're getting to the things that I feel passionate about. I learned about microfinance five or six years ago. I was part of an organization of women in the hedge fund industry that raises money for philanthropy, and we were looking at potential beneficiaries. We decided to look at some microfinance organizations.

I had never heard of microfinance before that, but as I started to learn about it, I became passionate about the power of microfinance. I traveled through West Africa and I saw it on the ground. I spoke to a lot of people who were involved in it, and learned that microfinance is a way of helping people help themselves. It's not charity; it's extending credit to people who have some existing business activity, albeit very small. It enables people, and particularly women, to become economically self-sufficient.

I always say that poverty is not a women's issue per se, but more than 50 percent of the world's poor people are women. When a woman has the ability to support herself and her family, several things happen immediately. The woman sends her children to school, as soon as it's possible. She gets health care for her family. The nutrition in the home improves. The whole community benefits. Rates of HIV infection go down. Life gets better for everyone.

As I've had the opportunity in recent years to travel the world and see microfinance on many continents, it's the same everywhere. You ask a microfinance client how her life has been affected, and she tells you about her children. In one generation, a woman goes gone from subsisting by selling sundries off a dirt floor to sending her children to high school and beyond. It's something that I am very proud and happy to be involved in. I chair a small microfinance organization in Ghana.

JS: What's the name of the organization?

BL: It's called Women's Trust, and we work in a village outside of Accra. We make loans to women and we have scholarships for girls and health education. It's really one of the most rewarding things that I do. I'm also on the board of a big global organization called Accion, which develops best practices and helps build the premier microfinance organizations in the world.

JS: Is there a role for something like regulation in microfinance? Is there an equivalent of that? Obviously there's not an SEC that's going to go out and regulate microfinance markets. How does that work?

BL: It's regulated in some countries and actually one of the things that makes the microfinance business better and more investible is to have it regulated. The difficulty is getting regulators to understand the difference between microfinance and commercial banking. Although there are great similarities, there are also major differences. So what is appropriate in capital requirements for a commercial bank is not the same as what's appropriate in microfinance. To have regulation enhances the credibility of the organization. In Ghana, microfinance has been regulated since last January. We welcomed it, because it means that we have passed somebody's scrutiny.

JS: So regulation in that sense means that the microfinance organization is maybe registered as an organization, as such, and has to maintain capital requirements?

BL: It has to maintain capital, and is subject to government inspection. It's different all over the world. The thing that makes microfinance regulation difficult in some places is limits on interest rates, because microloans are expensive to administer. There can be difficulties if the caps are too low. There can also be difficulties in some countries where a populist government facing reelection will suddenly declare that nobody has to repay their loans. This is very damaging to microfinance and to the borrowers, because once the election is over, the government is not giving away money and private institutions aren't coming in so quickly. Those are the regulatory issues that we see.

JS: For instance, the World Bank, do they have guidelines for microfinance organizations and things like that?

BL: No, they don't, but there are groups that have banded together, industry groups that have formulated best practice concepts and principles. That's something that has actually been spearheaded by something called the Center for Financial Inclusion that is funded by Accion, and so there were principles that good microfinance institutions follow.

JS: All right, Ms. Lucas, thank you very much for talking with me today.

BL: Thank you for having me.

[End of Interview]