Securities and Exchange Commission Historical Society
Interview with Emily Gordy
Conducted on September 23, 2013 by William Thomas

WT: This is an interview with Emily Gordy for the SEC Historical Society's virtual museum and archive of the history of financial regulation. I am William Thomas, and the date is September 23rd, 2013.

Thanks very much for speaking with us today. Generally what we do is start with a little bit of personal background, so where you come from and what brought you into your career path.

EG: Well, I'm actually a little bit unusual. I'm actually originally from Washington, D.C. I was born here and lived here until I was about ten, and then lived in Massachusetts after that, through college and law school. I went to American University Law School and ended up staying here permanently after law school.

My first job out of law school was with the Department of Labor and I was doing appellate work there, drafting appellate opinions, and it was a good beginning job out of law school but I was looking for something more of a career path that I could take and grow with and found an opportunity at the SEC and applied for it. It was an entry level staff attorney job in the Office of General Counsel at the SEC, and I was so lucky enough to get the position. So that's how I started at the SEC and it was really very early in my career.

WT: Okay, did you know that you were going in the law direction from the start, growing up? Were your parents lawyers?

EG: Yes, that's a good question. I was one of those people that decided very early that I did want to be a lawyer. My father was a lawyer and he was a partner in a Washington, D.C. tax law firm doing international tax work and so I was exposed to law from my earliest days. I really decided I wanted to be a lawyer probably at least middle school on. That was the direction I was headed in.

WT: That is early.

EG: Yes, it was early and that was what I was always going to do.

WT: Okay, so I see from your bio that you had an undergraduate degree in political science from Gettysburg College. So that was, I take it, setting up the entry into law school.

EG: Yes. I went to Gettysburg College because I wanted to go to a small liberal arts college reasonably close to D.C. and happened on Gettysburg. Actually, I think I probably started looking at the school because a couple of my father's partners in his law firms either had graduated from Gettysburg or had children there. So I looked at it, liked it, and I focused on political science. History and political science were always subject matters that I was very interested in. I had a couple of internships. There were internships in

high school and college and I think it kind of was sort of a natural lead in to the practice of law.

WT: And what led you then into American University? That's the Washington College of Law, right?

EG: Yes. I knew I wanted to get back to D.C. I had mentioned earlier I'd been born in Washington and grew up in Washington and in Maryland, and so I wanted to head back to D.C. I looked at several different law schools and was actually kind of between William and Mary and American and chose American just because of its location in D.C.

WT: I know that that particular law school has a very strong heritage going back to the early 20th-century of women in the law. Was that still evident? You finished there in 1984, was that still evident there at the time?

EG: Yes. That's a great question, and my husband was actually pointing that out to me just a few days ago. I have twins and they're both first year students in college this year, and one is actually thinking of transferring to American. My husband was talking to my son and he was pointing out that he was remembering my law school class and said that over 50 percent of the class was women and it was something I had forgotten about until he was just mentioning it just the other day. And yes, I think it wasn't in-your-face obvious, but I think at that point in time in '84, I had later experiences in my career where I was a little surprised by the limited number of women, or lack of women in certain situations. I

think my law school experience was unusual in that, with over 50 percent of the class being women, it was a very balanced perspective. And you took away from that, I had an expectation that that's what the workplace would be like going forward. So it was a great school to go to, for women, and I think they've really tried to encourage that balance, again, without being overt about it. It just seemed very natural.

WT: Did you have any preparation that led you ultimately into the securities area, a specialty in securities law or did you just have something else in mind?

EG: No. Some people do take that avenue when they're in law school. They really emphasize a certain type of law either through their coursework or their internships or certain of the advocacy groups. AU offers a lot of advocacy groups or summer jobs that they had. I took securities law and corporate law in law school and I was interested in the subject area, but I think another way that people find their path in the legal profession is based on their interests, but also coupled with the jobs that they get. I think, again, that I was lucky enough to get a job early in my career at the SEC. I found my passion in this area through that, those initial positions that I had, so I really developed it more by serendipity, or luck if you will, by again getting that first position.

WT: Remind me again the first position you had was out of law school?

EG: It was with an appellate board at the Department of Labor, so it was writing appellate opinions, dealing with compensation for injuries, for disease and injuries. And the

benefit of that position, I think just the entry level position, was the writing that I was able to do there. I think it was just a lot of writing and developing the analysis for the particular decision that was being made in the case and then putting together the analysis and the conclusions. So it was a good first writing job. It was not a career, and I think it wasn't going to provide a lot of different opportunities that a place like the SEC did.

WT: How long did you stay there?

EG: Two years. So really it was long enough to have the work experience, get the writing experience, and then begin to look for another position that really would take me in an area that would develop my career.

WT: Tell me a little bit about the circumstances that brought you into the SEC.

EG: The market fluctuates a lot, both the stock market and the job market, and the time that I was looking for a job I think both the legal profession and the law jobs at in-house or broker-dealer firms was exploding. And so there were a lot of opportunities at the SEC, they were having to fill a lot of positions, and I saw an opening in the Office of General Counsel and I thought it looked interesting and I applied for it.

WT: Who was the general counsel at the time?

EG: It was Dan Goelzer.

WT: Then, tell me a little bit about your work at the SEC, or maybe start with the environment at the SEC in general and then we can focus in on your work.

EG: Well, at the SEC, I came in at a very interesting time. It was in August of 1987.

WT: Okay, just before the break.

EG: Exactly, it was about a month before, and David Ruder had started a couple of months before, so he was the Chairman, and my impression of him was that he was a very thoughtful, deliberative, intellectual Chairman. But the Commission itself was a very diverse group. My impression of those first days of the market break, I was a very new staff attorney, very low on the totem pole. so I wasn't exposed I think to a lot of the higher level discussions that were going on, but at least the first couple of days it seemed a little chaotic. But I think everyone then poured their efforts into assessing the situation and going through the various analytics and studies that they had to undertake to understand what happened there.

In the Office of General Counsel, it had three separate sections. One was the counseling group, one was the appellate litigation group, and the other was the other litigation in the Office of General Counsel that basically defended the Commission and staff in various actions. So I was in the counseling group, and the counseling group was divided into three or four different areas that focused to develop expertise and understanding of the

issues in particular areas, so I was in the broker-dealer counseling group. We specifically focused on the issues that arose, or arise, with broker-dealer regulation. There was another group dealing with insider trading, the '40 Act, just to give you some examples, but I was in the BD counseling group.

WT: Okay, how big was that particular group?

EG: There was an assistant general counsel, a woman, and there was a first-level manager that was a special counsel, and a woman as well, in the BD counseling group. I would say there was probably eight to ten people in the group. There were a number of us that were just starting out so I think we were kind of leaning on each other in terms of getting the ropes down quickly, but there certainly were people that had been there a long time so there was a lot of resources.

WT: Was there anyone in particular, not just at the SEC but maybe coming up through law school, who served as sort of a mentor or a role model for you? It could be men or women. We were speaking specifically just a second ago about how there were women in the office in senior positions.

EG: I think there were a few women, yes. I think that folks that were the most helpful in mentoring were women that were pretty close to my age but they had started before I had, so they were at sort of I would say the first-level management positions. One person was Colleen Mahoney, who, at that point, I think she had moved over to the litigation side of

the office of the Office of General Counsel, and then Joan McKown, who was I think most recently the chief counsel of Enforcement. She left a couple of years ago, but she was a couple years ahead of me in terms of experience at the SEC and she was in one of the other counseling groups, she was in the insider trading group. It wasn't just insider trading; it was dealing with Corp Fin issues as well. She was in this other group, but then, I'd say within six months after I got there, she moved down to Enforcement in a management role. But those were two individuals that I ended up working a lot with over my whole career at the SEC in other capacities so I think kind of the mentoring probably started there.

WT: Was there still a sense of novelty at the SEC at this time that women were starting to take in these positions?

EG: I did not get that sense. I felt that there were a lot of women there, and I saw them in senior positions throughout the Commission from the very beginning of my tenure. For example, when I first went for my interview at the SEC, from the outside, one of the people that interviewed me was Linda Fienberg, who at that point was I think was the associate general counsel under Dan Goelzer. And then by the time I got there, she had moved over to be the executive assistant. That was the name of the position at that time. I think they've subsequently changed the name, but she was the senior sort of legal adviser to Chairman Ruder. So she'd moved over into that senior adviser position.

I did notice throughout my whole career that those individuals who took that position, it tended to be a launching point for other senior positions on at the Commission. But there were a lot of other assistant general counsels, and at that point Linda Quinn I think was head of Corp Fin as division director, so there were senior people throughout at all levels at the Commission.

Aulana Peters was one of the Commissioners, so she was a very interesting kind of role model to watch. She was energetic, passionate about securities law and regulation and what she did, and she had a sense of humor and she was very sort of pro-enforcement, too, so I think she also presented a good role model to be able to observe that.

WT: Could you tell me a little bit about your day-to-day work in your early years at the SEC?

EG: In the Office of General Counsel, there were two or three major functions. One was to review the enforcement recommendations coming up from the Division of Enforcement. All the recommendations that go to the Commission, before they go to the Commission, they're vetted with the Office of General Counsel and with the other appropriate divisions that have the subject matter expertise for the particular cases under investigation.

And so the Office of General Counsel, in this counseling group in particular, we reviewed all the enforcement recommendations. We reviewed them, we spotted issues, we had a Monday morning meeting that would last a couple hours where we would go around the room and present on our cases and get the input of the General Counsel and his

management team on any issues, both issues that we'd raised and maybe other issues they identified. And so that helped me hone my skills in terms of issue identification, resolution, and also just being open to hear what other people had to say about issues, and it was a huge learning experience.

We also worked on rule filings and commented on, from the Office of General Counsel's perspective, rule filings that were pending. I also got to work on and complete the rule filing that had been started before me by other folks, but I took it on and brought it across the finish line, which was a rule filing to make the proceedings for the individuals that practice before the Commission, the attorneys and the accountants, to make those proceedings public. They hadn't been public before and we wanted to have more transparency into those disciplinary proceedings, and so I worked on that rule filing, which was a great experience in terms of development of a rule and responding to comments and drafting a final rule.

We also wrote some opinions, worked on some appellate opinions, I think, if there was some overflow work that needed to get one. But it was a lot of advising and raising issues on other matters were occurring within the Commission.

WT: When you got there, just after the '87 market break, were there duties specific to that that you had to deal with, or was that insulated at your level?

EG: No, it was not my level or in my particular group. Current trading in markets but formally the Division of Market Regulation had the heavy lifting on doing the study and looking at those issues. I am positive there were a lot of people in Office of General Counsel working on it, but not at my level.

WT: Okay, so then when is it that you move over to the Enforcement division?

EG: I was in the Office of General Counsel for two years, and at that point was considering whether I would stay there or look for other opportunities. And at that point in time, I got a call from the Division of Enforcement from—I mentioned Joan McKown who had been in the Office of General Counsel but had moved down to Enforcement. Specifically she was in the chief counsel's office in Enforcement working in what was formally called the branch of regional office assistance and they had an opening and she wanted to know if I would be interested in it. And so I said, sure, I'd love to talk to her about it, and went down one day to talk to her about it and they offered me the position. That was in July of 1989, so it was just about two years later.

WT: Why don't we talk about some of the work there that you did then?

EG: I actually didn't intend to stay as long as I did there.

WT: You stayed there, right, throughout the rest of your time at the SEC?

EG: Yes. I was there from July of 1989 through July of 2000 when I left the Commission, and basically had a series of jobs and promotions in that particular group. But I would have to say that was probably one of the more interesting places to work at the Commission because you really saw everything.

The way that the regional offices at the Commission, the way that their enforcement program was structured, is that they would work on the investigations in all of the regional offices throughout the country, but in order for their recommendations to go to the Commission for authorization, their recommendations for a formal order of investigation, to file an administrative proceeding, file a complaint, settle an action, bring a subpoena enforcement action, they all had to come through our group. And I don't know if it's changed, but certainly throughout my tenure the regions brought a good two-thirds of the SEC's enforcement program every year, two-thirds of their cases.

So that was a huge volume of work. A wide variety of issues touching all manner of enforcement cases brought by the Commission came through our group, so you saw everything. And it was a fairly small group of about ten people at most, and so it was high pressure because you had a lot of work going on and you were looking at recommendations at any point in time really spanning the beginning of an investigation to the conclusion of an investigation. You saw fairly straightforward investigations and you also saw a lot of emergency actions, temporary restraining orders, requests and needing an authorization within twenty-four hours to go into federal court to freeze assets.

We were the ones who reviewed those recommendations for both factual and legal sufficiency, but also for whether the request conformed with basically either the Commission's or the department's policies. So there was a lot of information that was coming our way that we had to absorb and then work with the regional offices to—if they couldn't frame the recommendation exactly the way they wanted to or the way they'd framed it—to work with them to frame it in a way that complied with, again, either the legal requirements or the policies that we wanted to ensure consistency on.

You need to have a consistent enforcement program and when you've got recommendations coming in from all over the country naturally there can be issues with that. And so this was one mechanism to make sure that there was at least a broad-based consistency. It was a lot of phone calls and working with people at all management levels, staff and management levels, throughout the regional program in terms of helping to frame their recommendations and get them through the Commission.

So that was on the kind of the back end, if you will. The front end was before, I hate to say it, but it was before the instant communication we have now. The intranet within the Commission didn't exist at that point, there was no video conferencing, and so we basically represented the regions to the Commission and so we were at the Commission meeting every week presenting the region's cases to the Commission, answering questions and getting authorization of their actions for them. They would come in to the Commission meeting and present live if it was a significant case, but hundreds of cases

every year, it wasn't feasible to have everyone flying in all the time so for the vast majority we handled the cases before the Commission.

And that also involved, I was mentioning earlier, the emergency actions. If there was a huge ongoing fraud and we needed to go into court very quickly, we would work with the staff to develop the recommendation and then work with the Commissioner's office, whoever was the designated duty officer, to approve an emergency action. We would work with their staff to give them a heads up that we were coming, give them background facts and then present the case one-on-one to the Commission and their staff to get authorization.

We would often, in most cases, have the region on the phone also to help answer questions and work with us to get authorization. So it was a fascinating place to be, a fascinating position to have because, again, you were kind of right in the thick of it helping to get these actions authorized.

WT: If I understand properly, the Office of the Chief Counsel's responsibility with respect to the division is essentially to maintain a consistent legal standpoint for the Commission amid all the various actions?

EG: For the enforcement.

WT: Yes, for enforcement.

EG: The thing about the Commission then and now is, there are a lot of people throughout the Commission with expertise in various areas, and when I mentioned my prior position in the Office of General Counsel, the General Counsel's office was also looking at it from a consistency perspective. If we were dealing with an issuer reporting a 10-K or a 10-Q, failure with the reports that the issuer had filed, that case, if it was coming from a region, it would be viewed by our office in Enforcement.

There was also this, I described it earlier, a vetting process. It would go to the Office of General Counsel. They would look at it for consistency purposes and legal sufficiency, but it would also go to the Division of Corporation Finance. And there were people designated in each of the operational divisions to be the Enforcement liaison, so we had someone in Market Regulation, Chief Accountant's Office, Corporation Finance and Investment Management, so we would also go to them to get their view of the case for consistency purposes as well.

So our biggest thing, we served a lot of different purposes, but one was from an enforcement perspective, from a chief counsel's office perspective in enforcement, did we have all the facts that supported the charges, were all the people that were proposed to be named, did we have legally sufficient cases against them, and were we seeking the right relief from a sanctions perspective; from a case brought in federal court or an administrative proceeding, are we seeking the right relief?

So we were looking at it from a consistency standpoint, from sanctions, charging decisions and all of those types of issues. And because we would see so much, we frequently became the group that would be looked at for policy, for policy shifts, policy changes, answering questions on particular policy issues. I think that's a natural place in the chief counsel's office for those issues to be resolved.

And the chief counsel's office in Enforcement, the branch of regional office assistance, was probably the biggest component of the chief counsel's office. There were other individuals in the office of chief counsel who had other responsibilities, but our group was probably the biggest component so we dealt with a lot of policy issues as well.

WT: Was it your perception that—whether in terms of the types of enforcement, actions one would deal with, or the way that they would be dealt with—if there were shifts in that with either changes in the market or changes in policy at the Commission? Did you notice trends over time, I guess is the question?

EG: Well, yes and no. I think one early observation I had was that strong regulation and strong markets and fair markets was something that was not influenced by politics, by whether you had a Chairman that was appointed by a Democratic President or a Chairman that was appointed by a Republican President, and then the composition of the Commission would shift depending on who was in office.

Early on I noticed that I think there were other federal agencies where that wasn't the case. You could have a political agenda that would manifest itself in how the policies were implemented at that agency. Early on I noticed at the SEC that wasn't the case, because, I think again, strong regulation and fair markets really benefited those whether it was a Republican or a Democrat, pro-business, pro-investor, it was all basically the same. Everyone seemed to have the same perspective.

There was, I think, only one instance where I sort of thought, "Oh, I don't know, I don't know if this is the right thing," and it was when we were loosening up some of the Reg D exemptions and raising the dollar figure, I think, for 506 offerings early on. I think that was viewed as a very pro-business stance to take and I think some of us, at least on the enforcement side, worried about what might happen to investors at that point in time with relaxed requirements in terms of those offerings. I think we didn't see the havoc that we thought might happen at that point in time. Again, that was early on.

On a different aspect of your question, we would see certain trends. The pendulum would swing back and forth over the years on particular sanctioning issues, more around the edges. One area that we would notice that focuses would shift is when you had somebody who had already been the subject of a disciplinary action, either a criminal conviction taken by the criminal authorities or an injunctive action. Sometimes the pendulum would shift away from Enforcement using that action to bring a follow-up administrative proceeding, the pendulum would shift away from that and it was viewed as not a good use of enforcement resources because the person had already been disciplined.

I think the pendulum would swing away from that approach towards the need to bring those follow-up administrative proceedings, because, for example, criminal convictions only last ten years in terms of their statutory disqualification effect so there's a definite benefit with the Commission acting. So in some instances I would see shifts, but not from, I would say, a political bent, and in other areas it was more from a use of resources.

WT: And then would there be certain enforcement priorities coming from within the Commission, not necessarily political ones? For example, Chairman Levitt is known for prioritizing pay-to-play rules.

EG: Absolutely. You would have a particular Chairman or Commissioner who had a particular area that was important to them and that they felt needed the regulatory attention because of issues that they saw in that arena, and I think Chairman Levitt's a good example. When he came in it was pay-to-play and other areas in the municipal securities market, and so we definitely ramped up our focus in that area and brought a number of significant cases in that area. So, yes, that's exactly right.

WT: Do you even have to hire new specialists in that sort of area, or do you just become more adept at it yourselves in going into an area like municipal securities?

EG: My sense was that we had the expertise there. We certainly had the expertise within the Commission, so there were individuals that had worked on those rules. Actually, I think

at that point they were probably in Market Regulation, now Trading and Markets, and they had worked on those rules and so could be our experts when we had issues coming up in our enforcement investigations.

At that point in time, Chairman Levitt created the Office of Municipal Securities, so I think he both hired people from outside and then also drew on expertise that was within the Commission. At that point in time we didn't have to hire those people in Enforcement. We had the experts to go to throughout the Commission to guide us when we had issues that we needed their expertise on.

I think you hit on a good point. We definitely would develop our own expertise, and there would be a high learning curve whenever there was a new area, but people ramped up pretty quickly and had a common understanding about a lot of the issues and would use their knowledge and expertise in other areas, and then work with the experts to apply the analysis in the particular specialized area. So you had a lot of people shifting and gaining expertise as the issues arose.

WT: Now, just on the subject of learning curves, of course the market is changing throughout this period as well. I mean there was the dot-com boom. You probably leave before the bust, but then maybe we'll discuss it more in your career at the NASD. There's a whole issue of analyst-broker conflicts of interest and that sort of thing. But how would you come up to speed on new sorts of activities in the market that you would need to deal with in enforcement?

EG: Well, I think that, again, you had the ability to go to the expertise with the experts within the Commission, and we tended to see, when they got to the enforcement investigation side, the issues had often been identified by others at the Commission at an earlier stage, because in enforcement we were doing our own investigations, but frequently there were issues that had been identified by groups reviewing filings, corporate issuer filings in corporation finance or in investment management when they were monitoring the funds, and looking at disclosure issues both with investment companies and investment advisers, and also those issues coming up through the exam program.

I keep going back to our relying on the expertise of others throughout the Commission. We did that a lot. When new issues would come up we would rely heavily on those individuals. At that point in time we weren't hiring specific expertise in specific areas. I think in enforcement they shifted to do that in that area after I left.

While I was there they created a couple of specifically focused groups within Enforcement. They had an insider trading group and a municipal securities group, but they really drew and created those groups with people already in the Division of Enforcement, so it wasn't at that point in time going outside to bring the expertise. It was putting together the people that had demonstrated aptitude for those particular types of investigations and had learned from the investigations they had done, put them together in a group that could then bring that expertise to future investigations.

WT: Is that more like a committee or is it just a self-contained group, that this was what they did?

EG: It was a self-contained group and that's what they did.

WT: Okay. Now at a certain point you're promoted to deputy chief counsel in that office.

EG: Well, I had a series of promotions within the office. I was promoted to branch chief I think in '91, and then assistant director in, I think in late '93 was when I was promoted to assistant director. And at that point it was the number two position in the office and I held that position, and, being the number two in that group, the group began to expand a little bit. We had to have more input on policy issues within the division, and they promoted me or shifted my title to be the deputy chief counsel shortly before I left. And then the managers under me, they shifted their titles to be assistant chief counsels.

So, yes, the interesting thing for me—and that job really never got old, because, again, there was so many issues that were coming to the Commission through the enforcement program. And, again, as I described earlier, you ran the gamut from offering frauds, broker-dealer issues, advisers, investment company act issues, and issues with public company reporting as well. We saw everything. And, again, appearing before the Commission constantly, I think it gave me a lot of exposure and there were a lot of challenges in terms of navigating, both communicating with the Commission and resolving their issues and meeting their demands and communicating with senior

management in other divisions, and then also working with staff and management in the regions and addressing communication challenges in those roles. I think rising to a more senior position within Enforcement allowed me to take on more and more of that role.

WT: Was that a substantially different view of the Commission and the issues involved, or was it just different responsibilities with respect to them? I mean, would you have been able to see those sorts of communication liaisons taking place when you were in the lower position, or did you only see them when you became more senior?

EG: I would see them when I was more junior, but you really own them when you're more senior and it's your responsibility to solve them.

WT: I suppose that gives you a more profound appreciation of the intricacies going on there.

EG: It does. It really does, and it sensitizes you to the importance of communication and the importance of respecting the other person's viewpoint and view, and I think I took away two really important things. One was, vis-à-vis my relationship with the regional staff and management that I was working with, I saw situations where that relationship wasn't as collaborative and as beneficial as it could have been, and this was one of the things I was proud about, I was able to work with my boss, the chief counsel, to really work on that relationship and build strong relationships with the management in the regions and see that they owned the investigation, that it was their investigation. They put a lot of hard work into it and developed it, and from their perspective they thought they were

putting forth their best recommendation and the one they thought was right. It didn't always mesh with what we saw the Commission was looking for, and so to be able to navigate that and work with them to have it really be a collaborative end result that totally respected their work and their perspective, and the fact that it was their case, I think we were able to do that and build that.

And then on the Commission side, from my perspective there was nothing more important than to be completely forthright and present all the issues in a particular recommendation that you had. In fact, during our tenure, it probably wasn't my idea, but somebody came up with the idea to put on the recommendation memo to the Commission, if there were any issues presented in the particular case, put it right up front and put it out there. And that was always the approach I took, put the issue out there, tell them what it is, and then tell them why they don't need to worry about it. So that was the approach I took in working with the Commission and their counsel. I think it helped me be able to be more effective and I've really followed that approach throughout my career.

WT: Okay. Do we want to handle any other issues before we move onto your shift in career to the NASD, or shall we proceed?

EG: I think we can shift over to that.

WT: Okay, so what brought about this shift?

EG: Well I think for me, as you pointed out, I had a long tenure in enforcement, and while I was in the same group for eleven years I had progressively increased responsibility. But I did feel that by 2000, I felt like I'd learned most of what I needed to learn or could learn. You can always learn more, I totally recognize that, but at that point in time there wasn't room for me to grow in my career any more in that group in that role. I really loved the group I was in and I loved working with the regions and had good relationships with the Commissioners and their staff, so I didn't want to go anywhere else at the Commission. I really valued that role and the role that I had and so I felt like I needed to do something, I would need to go elsewhere to continue to develop my career.

I had actually been recruited a couple of years before to come over to NASD in a role that actually was—it was after the 21(a) report and they were creating an independent office to approve enforcement's recommendations. I considered the position but at the end of the day decided not to take it, and so I stayed at the SEC for two more years. And then the individuals that had wanted to recruit me before, back in around 1997, 1998, were recruiting for a new position that was going to be a senior policy role in their member regulation examination group, and so they came back to me and asked if I was interested.

The way that it was presented, it really was presented to me as, while I was coming in as a senior counsel, which seemed a little unusual of a career move since I was now deputy chief counsel in Enforcement, it was very much presented in terms of the growth potential in the job. It was a position that was going to allow me to see regulation from a completely different perspective, and also it was more focused in the broker-dealer area.

So whereas when I was at the Commission I was seeing basically everything the Commission does that ends up an enforcement case from all of the different operations, so you were an expert at a high level across basically all of the Commission's regulatory operations, here at NASD it was very focused obviously on the broker-dealers and associated person regulation.

The group that I was hired into had both a generalist perspective of dealing with policy issues that arise in the examinations conducted by the regional offices throughout the country at NASD, but it also had specific responsibility for the statutory disqualification program, for the membership application program, and for the fixed income program, fixed income as it related to the exams that were conducted. So it was an opportunity to get expertise in areas that I know something about but not a lot.

WT: Tell me a little bit about what exactly is meant by regulation policy.

EG: Again, it's very similar to the role I had at the Commission in that you have issues that come up as a regulator, specifically with exams, and the issues that come up can deal with implementation of NASD or FINRA rules or SEC rules. And when those questions come up, you need to have a consistent examination approach. You need to have a consistent policy approach in how those issues are resolved.

It was similar to a chief counsel's office or similar to a chief counsel type role but it was within member regulation and was a central place that all of the district offices could come to if they had questions about issues and interpretive issues. We weren't the general counsel's office, which obviously would render interpretative opinions, but we were within the member regulation department and would resolve policy issues that came up in terms of exam implementation.

WT: Did you have any direct relations with the member firms of the NASD?

EG: A couple of different ways, actually. Sometimes they would raise issues to us and we would look into the issue and work with the regional office and attempt to resolve it. Another thing that we would do in that office would be, NASD at the time and FINRA now puts on a lot of preventative compliance programs; you are much closer in terms on the regulatory perspective to the firms than you are at the Commission, and that was one of the surprising things when I came to NASD from the Commission. A lot of it is focused on assisting the firms and getting it right. And of course there's individuals in firms that don't want to hear it and they're not going to do it right, and so we have to bring the enforcement cases that we bring, but there's a lot of firms that are trying to get it right.

And the preventative compliance programs that—I think the SEC is doing more of that over the past number of years than they used to do, they didn't do a lot of it when I was there. But NASD did, and we would, especially when new regulatory areas would

occur—like when the anti-money laundering, after the Patriot Act was passed and all the anti-money laundering rules came out and applied to broker-dealers; when the SEC passed a comprehensive overhaul of the books and records provisions; when other significant regulatory changes happen—what we will do is put on preventive compliance programs and travel around the country and give presentations on the new regulatory requirements, and it really helps. You are interacting with the firms at those presentations, but it helps you communicate directly to them on the new requirements and it just is another avenue to assist in better regulation.

WT: As I was trying to get at a little bit before, the post-2000 period is of course a very interesting time in regulation. As I mentioned, the analyst-broker relations. And I have to admit I'm less familiar with NASD than I am with the New York Stock Exchange regulatory arm, because I've spoken to some people over there and of course they're under intense scrutiny in this period. I'm wondering if you can give me maybe a little bit of a sense of the period from your perspective after you arrived. And of course there's Sarbanes Oxley as well, one mustn't forget.

EG: Yes. There was a lot going on. We had the analyst conflicts, cases that were ongoing, the quid pro quo, QPQ cases that were being developed in enforcement, the anti-money laundering rules all changed in 2001, 2002. There was also the market timing scandals a couple years later. It was a time period of intense regulatory change. And I think one thing that I found to be very interesting and I noticed was that we frequently would have

examiners in our district offices who would be identifying issues in their exams that had tremendous problematic implications. Our market timing cases –

WT: Is that the specialist front-running, or is that separate?

EG: That's separate, and actually I'm not thinking of market timing, I'm actually thinking of the break point. The break point sweep that we ended up doing, and ended up doing with the SEC, was initially identified by an examiner in our Philadelphia office. It was of a particular issue with regard to particular classes of shares and investors being steered to one class of shares where they wouldn't get particular breaks on commissions. It turned into a major regulatory response on both our part and the SEC. Again, it was initially identified in the exam program.

We had other issues. There were a couple other issues that I saw where—I'm thinking of for example, Reg S-P was another one—and there was confusion coming out about whether it applied to all broker-dealers or whether it applied to just bank-affiliated broker-dealers because it dealt with information sharing and because it arose out of the statute that was addressing the relationship of banks and the financial services industry.

And it was an examiner in another district office who got a call from a firm, and from what she was hearing from the firm was that the firm thought that regulation Reg S-P didn't apply to it because it wasn't affiliated with a bank. And that examiner, one, identified the issue, two, communicated with the firm that it did apply to them, and the

third and most important thing they did was pick up the phone and call us in Washington, in the policy group. And they called us and they said, "We think there might be a bigger issue here. We think that there might be some confusion." She was really paying attention and I always go back to that. To me it was an interesting example of how one person can have their antenna up and see something and think bigger picture, and not just dismiss it and let it lie.

Well, we ended up taking that issue and taking it all the way up to the most senior executives in our organization and basically saying, "We think there's a lot of confusion out there. We think there's a lot of firms that may not make the compliance deadlines that are coming soon because they don't think it applies to them." We enlisted several different groups within NASD at the time to develop a multi-pronged communication effort to reach as many firms as possible as quickly as possible because of the deadlines that were approaching. So I think for this organization, it's good to have people that are serving in sort of central policy roles that can see issues as they come up.

WT: Was it evident there was a particular source of the confusion in this case, that there was a certain ambiguity perhaps in regulation?

EG: I don't think so. I think that what I've noticed over the years is that there's a lot of regulation, there's a lot of rules, both SEC in our space, FINRA rules, SEC rules, MSRB rules and now other regulatory requirements. I think that for firms, it's a lot to stay abreast of. I think when there's a major shift in a new set of regulatory requirements

often, particularly not the bigger firms that have the huge compliance departments that are on top of all this, sometimes it's a challenge to stay ahead of it. I think if there's a regulatory requirement that comes out of a particular statute or a particular response to a particular problem, a firm may think that the regulation doesn't apply to them when in fact it does.

You know, 529s are a whole other example. Those were traditionally sold. I mean they are, they're an investment tool to help pay for college and to plan for college. And so investment planners, insurance affiliated brokers, investment adviser affiliated brokers, those were early on the ones developing and selling those programs. A lot of people in the beginning didn't know that they had been designated as municipal securities. Well, if you're going to sell a municipal security you have to comply with the MSRB rules and have the appropriate registrations. There again was an area where there was a heavy selling effort going on and a lot of people had no idea those MSRB rules applied to them. So we had to develop, working with the MSRB, some communication tools. So I've seen over the years in a number of instances where there's just an initial confusion about whether a particular regulation applies to a subset of firms.

WT: If I can shift gears to come back to the theme of women in regulation, one tends to think of the broker-dealer world as more male-dominated. I don't know if that was your perception, but at the same time, this I believe is the period at the NASD where you have Mary Schapiro and Elisse Walter who are very senior within that organization.

EG: Yes. I think there was a lot of good role models for senior women at NASD, and then FINRA as well, and not just at the Mary/Elisse level, too, but at other levels. Linda Fienberg was head of dispute resolution, chief hearing officer when I came over. You had other people in senior positions throughout the organization.

One sort of surprising thing that I had happen to me early on: I moved over to enforcement in November of 2003 when enforcement underwent a reorganization. And probably within a month of my being here I was at a going-away lunch for one of the attorneys that was leaving to go to another office within NASD at the time, and a woman attorney came up to me at the lunch and said to me, "Oh, thank God you're here. Now there's," I think she said, "three of us." I remember being in a state of shock when she said that. I'll never forget it. I mean it was ten years ago and I'll never forget it, and I literally just stood there and stared at her and I was like: what are you talking about?

And then I kind of did the math. I mean at that point there were three or four women in the enforcement department, at least in the home office in Washington. I think there were more women in the regional enforcement program, which was again spread out all over the country, but she was focused on the home office. I was shocked by that. I couldn't believe it, and she in fact was right though. Because when I had been in member regulation, the woman who was the head of the department was a woman, there were women on my team, there were women in other offices; there were women that were heading up at least two or three of the district offices at the time.

So it wasn't stark to me of being a male-dominated department. It just seemed kind of fifty-fifty to me. But, yes, enforcement, in the beginning there were very few at least in the home office, but very soon after that they began to hire a lot more women and it did become a lot more balanced. Honestly, today, I don't know what the balance is, but I think definitely a significant percentage of the department are women.

But one thing I also noticed early on, and for a number of years in the management group, in the senior management group, I was one of the few women. So in terms of women in this sort of regulatory space, it was predominant, at least on the management side within my department in enforcement heavily male-dominated.

WT: Did that seem to make a difference at all to the culture of the place, or was it just a numbers issue?

EG: I think the culture early on was more kind of a male-dominated culture.

WT: It could be difficult?

EG: Yes, a little bit, but I think it's shifted more. I think it's now a more balanced culture, and more balanced on the number side as well.

WT: In terms of that, or in more general cultural issues, when NASD came over to become FINRA was that a major shift in your experience, or was it fairly organic, so to speak?

EG: On the male/female issue?

WT: I guess I'm referring more to the process of creating FINRA, but I mean if there is something to be said. I know that there are a lot of people coming over from NYSE Regulation as well who are women in senior positions.

EG: Yes, I think it was very organic. I think that there were a number of women that came over in very senior positions, so you're obviously right. Susan Merrill became the head of enforcement. Her entire senior management team, there was one man and the rest were women. And then there were other senior managers, executives that came over in other departments that were women.

I think everything just naturally shifted out to the right balance overall. I think the three biggest departments that were affected were probably enforcement, the member regulation exam program, and then there was a shift on the dispute resolution side. Speaking for enforcement, we had a lot of work to do to integrate our two programs. What I found fascinating, when I moved from the SEC to NASD, and then having worked on the integration and worked at FINRA post integration, we're all regulators, whether it's the SEC, whether it was NYSE, whether it was NASD, we were all regulators but we all did it differently. I think that was one of the most amazing things that I observed throughout my whole tenure.

And we had a different perspective and different approaches on a lot of the ways that we did, just between NYSE approach to enforcement cases versus our approach to enforcement cases, there were different approaches. There was a lot of joint teams communicating on issues and approaches, a lot of the way they did things had to be shifted over and adopt the way we did it because we were using our rule book and our disciplinary process. And so if NYSE enforcement did things a certain way, then they couldn't necessarily continue to do it that way because these cases had to flow through the FINRA disciplinary process, which was for all intents and purposes the NASD's disciplinary process. But I think your use of the word organic was a good one.

WT: People could see the different perspectives but understood how they had to come together?

EG: Yes, very much so.

WT: Now, Susan Merrill came from private practice. I'm going to be speaking with her next month so I've done a little background research, but did she bring a particular perspective then, coming from that background?

EG: Yes. I think much like my current boss, Brad Bennett, who's the head of enforcement here—he came from private practice—I think that brings a different perspective from those who have been regulators for much of their career. But it's a good balance.

Because they have been on the defense side they can see issues from a different perspective, and I think that's really helpful.

I've heard a couple people say this—and I actually heard the person who used to be the head of the Boston office at the SEC and then he became the deputy several years ago, I was a joint meeting with him, a joint NASAA meeting with the SEC and us, and he said that as regulators you have a lot of power and a lot of authority and with that you have to be judicious in how you exercise that power.

I've seen throughout my tenure, my entire regulatory career, I've seen instances where I think people were overreacting to a particular situation. I think that one of the most important things that we can do as regulators is to be balanced in how we enforce our regulations, and I think that having people who come from private practice, it's a healthy perspective to bring to that dialogue and to the debate that you have on any particular difficult issue that you're trying to resolve in bringing enforcement cases where you're bringing a public action that has the ramifications to reputation—the bottom line in terms of fines, time out, somebody's career, business operations—and you want to make sure you're doing the right thing. So I think that having that perspective from the defense bar is healthy. It's a healthy perspective to bring to that discussion.

WT: From a perceptual standpoint, obviously being the subject of enforcement action you can see the institutional authority that someone has, but on the regulator's perspective does it seem like there is less power given, that there are only so many regulatory resources that

you have versus an entire financial industry that is very wealthy and powerful in its own way? Do you see it that way? Do you not feel that power quite so much?

EG: No, I don't. I know that people talk. People talk about the revolving door, and people talk about the resources that Wall Street has. Sure, we always are dealing with resource issues and resource constraints, and there's more than enough work to go around and we could do a lot more if we had more resources. But I really don't feel at all that we aren't as effective because of the sheer magnitude of the resources on the other side. I think they have to comply with the regulations, we have to interpret the regulations and enforce the regulations, and whether it's a major wire house or mid-size firm or small firm you have to comply.

Balancing the appropriate mitigating and aggravating facts and all of the other issues that we take into consideration when we bring a case, we're going to bring the case. And just because somebody is a major Wall Street firm with major Wall Street named lawyers that we all know and love, have worked with, if they're on the other side it doesn't affect the decision, if it's the right case to bring.

WT: You mentioned overreaction a little bit ago, and I'm wondering if in the office here one feels pressures at certain moments, such as in the aftermath of the Madoff scandal, for example, when there are widespread calls for stronger regulation, stronger enforcement, and also people start complaining about revolving doors and possible conflicts of interest

and that sort of thing. Do you feel that at this level or do you feel that the organization that you're a part of insulates you from those pressures?

EG: I think the organization definitely insulates from that pressure. I think that we are looking at the investigations that are referred to us and that we're undertaking; we're cognizant that we're not missing something, we don't want to miss something; we're concerned about protecting investors. If a situation is identified and people have concerns that it could be a big ponzi scheme, no one wants to miss something like that, and so the pressure is to make sure that you're not missing something like that. But I don't feel the pressure from a perceptual standpoint that we need to do x, y, z because we'll be criticized.

It happens, but in fact we have those conversations all the time. Somebody's going to write an article. We have to provide information because we know a reporter's working on a particular story. The part of the conversation I always participate in is the one where we say, "Here's the information. We're doing the investigation. We'll take the appropriate action. We're not going to react to that kind of pressure to take action. We're going to take action because the facts warrant it."

The revolving door, absolutely not. I've obviously been working as a regulator for a long time and have worked with a lot of senior people; throughout my tenure at SEC, NASD, FINRA have worked closely with a lot of senior people. I absolutely can say both for myself and also for the people I work with that there isn't the pressure of the revolving

door to take an action or consider going in a direction that isn't otherwise warranted by the particular facts and all the circumstances in the case.

WT: Right. When you're in this building your job is your job, and generally people among the firms and private law practices and so forth respect that.

EG: They sure do, and I think that the people that I've worked with that are currently at firms representing people before FINRA, they know that too, and they respect it because I think fundamentally they respected it when they were at the Commission and that doesn't change.

WT: Right. So if I can go back to your personal history here, in enforcement I notice you've had several different positions. Have they come with substantially different perspectives? For example, there's been regional enforcement head, so I suppose if you're a regional that has a particular perspective that goes along with it, but I don't know anything about that.

EG: Yes. No, it definitely does, and I think that was when enforcement had undergone a reorganization, and in late 2002, 2003, continuing in, and part of the reorganization was, we actually have enforcement employees in all of FINRA's district offices throughout the country and they report to one of five chief counsels. But the way we were structured before is those regional chief counsels reported to one of three Washington chief counsels who also had their day job to run the enforcement centers here in the home office. And

so, part of the reorganization was to create this one person who was responsible for the regional enforcement program in Washington and everybody would report up to that person.

I was the first person to have that job, and it was actually a great fit for two reasons. One is, I had done the regional enforcement job at the SEC which was different because the regions didn't report in to us but we worked with them and understood the perspective of Washington and the regions and to be able to have a good collaborative relationship, and then also when I had the policy job in member regulation when I first came to NASD, I worked with the district offices. And the regional enforcement program for the most part, almost 100 percent, is handling the enforcement recommendations that come out of the exam program. And so having that exam perspective when I was in the policy job in member regulation helped me have good perspective in terms of working with the regional attorneys because they have to work really closely with the member regulation exam program. In their cases and the types of actions and the working relationship with member reg, the development of the investigation, the ultimate resolution of the case, it's all tied together with the exam program. So yes, that is a different perspective than working in the home office and doing home office investigations.

When I moved over and had that job, though, I was part of the senior management team so I was every week in meetings with the head of the department and then also with senior management from the home office, so I could see the issues that were being raised in the home office. And a lot of times there was overlap. There may be a policy issue

arising in a regional case that really affects the whole program, or a policy issue arising in a home office case that affects the whole program. So there are different perspectives, different types of cases, but there are policy issues that I think can be unique to both programs but then there are policy issues that are central, post integration, post the merger, the home office cases especially over the past several years have started to shift a little bit.

One of the consequences of the merger was to create a centralized review group that was a group that existed at the NYSE, so it started off in enforcement. Then it moved over to member regulation because it was similar to a triage function done in member regulation department, reviewing U4s, U5s, terminations for cause, complaints, arbitration claims and what's called front-end cause, so we took all of those functions, all of those triage functions done in the different organization in different places, and put them into one place. And now that group is housed in the office of fraud detection market intelligence. They get a lot of what we call single rep cases coming out from terminations for cause, U5s, complaints, arbitration claims and tips, and they do a triage investigation, and then those are sent to enforcement. The regions on the member reg side used to have a heavier cause review. They still do it, but a lot more of those investigations used to go to the district offices so they would come up through the regional enforcement program, now they're coming straight to home office.

So home office has a lot of very significant complex investigations that are more traditionally done in home office structures, whether it's the SEC or here, but a significant

part of our case load here has shifted to the single rep cases. So even within our own home office, there's an evolving perspective on cases that's organically, to use your word from before, organically shifting the focus of the program.

When I was head of the regional enforcement program, completely different perspective, and it helped me in my successive roles that I've had within enforcement to have that perspective. Really having both the home office perspective and the regional perspective I think helps have a more cohesive and collaborative department.

WT: Have there been particular enforcement movements in the enforcement area arising from the financial crisis, the Dodd-Frank legislation and all the other associated recent events?

EG: We are starting to see more cases recently coming out of the private placements reviews that are being done. FINRA had created a rule to review private placement offering materials in conjunction with broker-dealer self-offerings, kind of like inherent conflict of interest there, but it's managed through the disclosure and reporting requirements and review requirements that corporate financing does through the review of those offering materials. And we issued another rule that now requires all these private placement filings to be filed with corporate financing, and they do those reviews, so we're starting to see more investigations in the private placement disclosure area.

With Dodd-Frank and the lifting of the general solicitation ban that goes effective today, and the amendments to the bad boy provisions to impose restrictions on who can

participate in those offerings, we expect to see more coming out of that area. The Jobs Act is going to be an area that's going to become an increasing focus for us as soon as the rules are finalized and go effective. They haven't gone effective yet.

WT: What do you anticipate there?

EG: Well, I think as you see more capital being raised, just making sure that both the SEC and we are on top of those that are raising capital in this area. Now, FINRA only has jurisdiction over those offerings that go through broker-dealers and associated persons, so our universe is a more limited segment of regulation in that space than the SEC's, but we'll certainly have issues that we need to be on top of.

I think a lot of the financial crisis was brought on for a lot of different reasons but certainly the complexity of the products that were being offered was an issue, and people's selling products to individuals that probably shouldn't have been buying those products, firms and associated persons understanding the complexity and the risk level of the products, we've brought a number of cases in that area that really arose out of the collapse and it continues to be an area of focus for us, complex products and structured products.

WT: Can things like cases involving particularly complex products be difficult to prosecute, or is it a case where there is clear malfeasance involved according to the regulations that are in place?

EG: Well, I think we have been able to apply our regulations to the issues that we were seeing. We have our suitability rule, which is a good tool both for dealing with customer specific suitability issues, a particular product is not suitable for a particular customer, but in the complex product area we also have reasonable basis suitability which is a firm understanding the product and the full extent of the product and the complexities and the risks, and appropriately training the individuals that are selling the product. They have to make an assessment that that product is a suitable investment for any investor. And I think that that, in addition to our disclosure rules, were particularly important tools for us to use in prosecuting those cases, so I think we were able to bring a significant number of cases that really addressed issues that we saw in firms by applying the rules that we had.

WT: We've gone on about an hour and a half, so why don't I just finish up by asking you a little bit about your current position. So you're currently senior vice president/chief of staff/deputy director of enforcement?

EG: Well, I have a lot of different roles here. Brad Bennett, who's the head of the department, has a senior leadership team which, interestingly enough, has three of us women so I don't think we have any issue in terms of women participating in senior management decisions made in this department.

I have a role that has me responsible for a lot of different areas and issues that come up, from addressing policy issues to working with senior leaders throughout FINRA as issues

come up that affect enforcement or where they need enforcement's perspective, participating in discussions that we have on any reorganization issues within the department, operational issues within the department, working as a liaison to other regulators when we have policy issues that involve the SEC or the states.

WT: It's quite managerial, but you're still in the thick of it, so to speak.

EG: Exactly. Yes, managerial but in the thick of it, especially on policy issues, and also on difficult issues that come up in particular investigations and with resolving particular investigations. So I think it really draws on everything I've done to date in terms of all the different positions that I've had both within FINRA, within enforcement, within FINRA in the member regulation side, and then also at the SEC.

WT: And you've always had quite a bit to do with policy throughout your career no matter where you've been.

EG: Yes. That's been a common thread throughout my whole career. I seem to get involved in a lot of different issues. It definitely keeps it interesting.

WT: Well, that seems like a good place to wrap it up then.

EG: Okay.

WT: All right. Thanks very much.

EG: Sure, thank you.

[End of Interview]