Securities and Exchange Commission Historical Society
Interview with Elisse Walter
Conducted on May 9, 2014 by William Thomas

WT: This is an interview with Elisse Walter for the SEC Historical Society's virtual museum and archive of the history of financial regulation. I'm William Thomas, and the date today is May 9, 2014, and we're in Bethesda, Maryland.

Thanks very much for agreeing to speak with us today. We have quite a lot to cover, but why don't we at least start with a little bit of personal background? I understand you're from New York originally?

EW: Yes, born in Brooklyn in 1950.

WT: You grew up there?

EW: Well, not really. I sort of halfway grew up there. I lived first in a very small apartment with my parents in Bensonhurst, then we moved to East Flatbush, and we left Brooklyn for Long Island when I was nine, in 1959. The rest of my pre-college years were on the north shore of Long Island.

WT: I saw that you spent a little bit of time at Brown and then went to Yale, was it?

EW: Yes. I spent two years at Brown, where I was an applied math major. Then, when Yale went coed in 1969, I transferred to Yale.

WT: Can I ask what got you into mathematics?

EW: It was something I was always interested in. My father was a CPA and a CFO. Math was always my first love. I wasn't as good at it as my little brother, but I was pretty good at it. That was always what I was interested in doing, either that or languages. I fooled around with the idea of becoming a translator for a while. Law was kind of an odd and unexpected choice for me, actually.

WT: How did you end up going in that direction?

EW: Oddly enough, through a series of probably weird mistakes, in a way. Academically, I never should have transferred from Brown to Yale, because Brown was the ideal place for doing what I was doing, which was basically theoretical electrical engineering. I was smart enough to check to see that Yale had an applied math major, but it never occurred to me that there were different types. When I got there, I realized it was heavily science-oriented, and I neither had the prerequisites for that, nor was I terribly interested in getting them.

So I decided to become a theoretical, regular math major. With the exception of my wonderful best friend, Deena Steinberg – who's now Deena Schneider, who ended up going to law school with me as well – I thought that most of the math majors at Yale were rather strange. I thought the math professors were rather strange. So, I took a good

look around and decided that I was far too much of a people person to spend the rest of my life with these people. I thought, well, I really ought to think about doing something else.

I graduated in Yale from 1971. It was a year of men thinking about going to law school and medical school to get out of the draft. It was the era of the draft lottery. So everyone was thinking about going to professional school, and I thought about that too. In a lot of ways, I really wanted to be a pediatrician, but I didn't have the prerequisites for that either. In a very, I think, backwards way, I decided that I really couldn't be a successful doctor and have a family. Actually, I think it would have been easier to be a successful pediatrician and have a family. So I decided to take the law boards. Then, when I did well on the law boards, I decided, well, let me see if I get in. And then when I got in, I decided, well, maybe I ought to try it. I actually disliked law school rather intensely.

WT: This was Harvard Law?

EW: Yes. But I never quit. This was Harvard Law pre-Elena Kagan, and apparently she really revolutionized the place. It was rather, I thought, an inhumane institution at the time.

WT: Could you tell me a little bit more about that?

EW: It was a place where if you weren't on the *Law Review* – and I could see that contrast, because my husband was. I was on the *Civil Rights-Civil Liberties Law Review*. Everyone who wasn't on the *Law Review* was essentially treated as a nonentity. No one had the time of day for you. There were some exceptions to the rule, but the professors really weren't interested in you. The advisor we had for the *Law Review* I worked on never talked to us, no less did anything. It just wasn't a place that was very supportive.

Now you can tell that it is. I've been back, and the atmosphere has changed a lot. It certainly stands in stark contrast. Our younger son went to Georgetown. Georgetown was a lovely place. You could tell from the first time you walked in the door.

Much as I didn't really love the institution, I re-met my husband there. I had lots of good friends. I never thought about it much, but I had never been a quitter. Once I got there, I was going to finish.

WT: You said re-met your husband?

EW: Yes. My husband went to Brown for all four years. I met him in three different ways. He dated my freshman-year suitemate all the way through college. He and I took Psychology I together, and it was really boring, so we played games in the back of the class together, and we actually spent an evening together at a mixer once. That was the end of that. Then we re-met in law school, and that's where we started to date.

WT: Did you have a sense of what kind of law you wanted to go into when you finished? Did you want to go into law after the experience?

EW: I did. I wanted to do something radically different than what I ended up doing. I did not take securities law in law school, largely because Louis Loss gave multiple choice exams and the student body thought that was insulting. I was much better at multiple choice than essay, so I probably should have taken it, but I didn't. I did take Victor Brudney's corporate finance course, which I really liked, but I thought I wanted to be a civil rights litigator. I actually turned down a job at the Civil Rights Division because I didn't know anyone there. I didn't know anything about it. I didn't know whether I was going to like it or not. I went back to the firm I clerked for.

WT: The division of what?

EW: The Civil Rights Division of Justice. I still thought that's what I wanted to do. I became a litigator in private practice and really didn't like that. The pace was such that I thought it exaggerated my neuroses. My theory was that I would be a drunk neurotic if I became a trial lawyer. The firm, Arent Fox, or Arent Fox Kintner Plotkin & Kahn, at the time, had an opening in their corporate securities group. I'd proved to myself, I thought, that I could be a decent litigator. It was time to try something else, so I tried that and really liked it. When I woke up a couple years after that, three years out of law school, deciding that, "Whatever happened to the fact that I wanted to do public service?" one of my friends down the hall, who's still a partner at Arent Fox, said, "My best friend is at the

SEC, and if you're going to do public service, why don't you send your resume over there?" It was the end of the fiscal year for the government. Within, I'd say, four to six weeks from the day my resume touched the ground, I had a job offer and decided to go.

WT: That's pretty good. What kind of cases were you working on at Arent Fox?

EW: We had an interesting practice in the sense that it was probably more a regional than a national firm, but it kind of had a mixture of both. I remember doing a zoning case. I remember doing a case that was like a first-year law school exam. It was about adverse possession and the bamboo between two people's yards. That was an accommodation for a client. Most of what I did was commercial litigation – a touch of securities in there, but not that, for the most part.

WT: One of the things we're working on with the SEC Historical Society is that we did a very large series of interviews on women in securities regulation last fall. So, of course, we're very interested in your own perspective on that. You're often cited as one of the people that other people saw at the high levels. I'm wondering what your perspective was coming through it. Of course, there's Harvard Law in the '70s, the private firm you were in, and then the SEC environment. We're interested in all that.

EW: It was very interesting. I've been very lucky. There actually was a book written about the women in my Harvard Law School class. I no longer remember whether my name was even in it. I certainly wasn't one of the people who was featured. It was a seminal

point in time, I think, for women in the profession. You can see that, in part, because you look at the demographics as I went along. When I was at Pembroke – it still existed when we were at Brown – there were three and a half Brown men for every Pembroker.

I got to Yale – and, granted, Yale didn't take seniors, so that first year it's a little bit of a not-fair statistic – but it was six men for every woman. In my Harvard Law School class, it was eleven men for every woman. There were 50 women out of 550. Ten of them came from my Yale class. They were feeling their way towards how to do this. It was a very uncomfortable place to be a woman at Harvard at the time. There you got on the *Law Review* by grades or by writing. There was only one woman on the *Law Review* when we were there.

It was very much of a transitional time. I went to Arent Fox with a woman named Candy Fowler who was a very good friend of mine who was in my Harvard class. We both started out in the litigation department. Neither one of us ended up in the litigation department. It was nice to have a companion. But, on the other hand, I would say I never felt that the men that I worked with had a problem working with me. They were a bit bemused by these young women – what do you do with them? (Laughter)

Interestingly enough, we were considered to be, in an ironic way, a great asset in the litigation group because we did a lot of work in the Maryland local courts, and most of their rules were not written down. You didn't know what they were until they told you you'd violated them, and they wouldn't answer questions on the phone. But, when a

young woman called, they assumed she was a secretary or a paralegal who was going to get beaten upon by her evil male boss if she didn't come back with the answer, so they would answer all of our questions. We were the stalking warrior finding out what happened in the local courts.

I found that there was no real lack of respect, but you were kind of an oddity. It was true, you were. At the time I left Arent Fox, three years out of law school, Candy was already gone, she had gone to work in elder law, and I was the most senior woman in the firm. They were a firm that had made women partners, but women partners and strong women lawyers were sufficiently rare that, no matter where you were, somebody was looking to give you a better deal, so they would leave to go somewhere else. That was a pretty peculiar feeling. I remember the senior partner I worked most closely with was saying, "Don't go … When you become a partner ..." And I looked at him, and I said, "Bob, I'm three years out of law school. You have not a clue if they even want to make me a partner – so you shouldn't – so let's not talk about that." (Laughter)

I had a good experience there. I remember the same person, he led the corporate securities group, one of the first things I did, he came down the hall to see me. He said, "Okay, I've got good news and bad news. Which news do you want first?" He said, "A client called. He thought you were a paralegal. That's the bad news." He said, "The good news is, I straightened him out, and he thinks you're wonderful." So he said, "I guess all in all that's probably a pretty good mix." It depended on who you were. My rule was that anybody could call me "honey" if he was older than sixty-five at the time,

since I was about twenty-five, and it didn't bother me. Some of the older clients did that without any malice, I think. But there might have been other people who would have been much more offended by it.

The thing I found that was different when I got to the government is that there were many more senior women, although they hadn't made breakthroughs yet everywhere at the Commission. We used to talk about the boys' divisions and the girls' divisions, because Enforcement and what is now Trading and Markets (what was then Market Reg) were slower to come around to having senior women. But there were role models. There were people who either quietly or not-so-quietly mentored you. It was at the time period when Roberta Karmel was a Commissioner, and Roberta, in a very quiet way, knew all of the female professionals on the staff. She knew whether you were married or not. She knew whether you had children or not. She didn't make a big deal about it, but it made you feel like somebody was looking out for you and you belonged.

It seemed pretty clear to me as I moved up the ranks – which I was lucky enough to do quickly – that decisions were made on merit. Some of that, I think, was because, unlike today, there were very few single women professionals who were the heads of households. They either came from dual-wage-earner families, or they were single. Salaries were not great. I made a big $126,000 a year when I left the Commission in 1994, when I left the first time. Women, I think – and this is my own theory – could afford to stay somewhat longer, because they either were only supporting themselves, or they were part of a family that had two incomes. There were women like Kathie

McGrath, and there had been women even earlier than that who were in very senior jobs. It made you feel like there really weren't any barriers with respect to that in front of you.

Now, there were people who had a problem. A gentlemen who shall remain nameless, with whom I worked – he wasn't a litigator but he was a subject matter expert on one of my first appellate cases – was incredibly difficult to work with when I showed up in the room. The male I was working with on the case, more junior than I, we talked about it and decided when we needed information from this other person, he went without me and came back with it. We worked around it tactically – not a good thing, but not fatal.

It had a very good feeling to it. I remember Kathie, in particular, stressed things like making clear that she had other demands on her time, and she was going to meet them. I know she told me a story once about getting up in the middle of a meeting and saying, "I'm sorry. I have to leave. I have a conflict," when she had to take her son to the doctor. I thought, OK, I am, in a sense, the next step down the road, so I would get up in the meeting and say, "I'm sorry. I have to leave. I'm taking my son to the doctor." It was just one more step for people to build on.

WT: Were there any other mentor/role model-type people that we should mention at the Commission?

EW: Well Debbie Hechinger had become – I think Debbie was an assistant director in Enforcement. I didn't know her.

WT: I should say we don't have to limit it to women, either, necessarily.

EW: Oh, no. There were incredible role models. I was hired by Harvey Pitt, who only stayed a year after I got there. I adored working for Harvey, and Harvey's been a big brother ever since. I worked for an interesting combination of people. I was lucky that way. In private practice, there were two partners at Arent Fox I worked with primarily: Bob Hirsch and Jim Halpern. Bob was a deal maker, a big personality. Jim was a lawyer's lawyer, meticulous. Anything I went to research, he could find two more sources for me to look at, no matter how hard I tried.

Then I went off to the Commission. My first boss was Mike Wolensky, who was a litigator. He had been in the regional offices. He went to Georgia Tech and has a wonderful, large, southern personality. Then, I worked for Jake Stillman, who is the epitome of the lawyer's lawyer. To me, working for people who had very different approaches and very different personas enabled me – and a lot of this was subconscious – to pick the things that worked for me and to construct my approach to things, which was somewhere in the middle and a combination of very different things.

I was extraordinarily lucky. If you look at the string of general counsels I worked for, Harvey and Ralph Ferrara and Ed Greene and Dan Goelzer, who is fabulous and one of my best friends to this day. I was very lucky to work with people who were both open to listening, willing to teach, and supportive, and stood up for their people, which I think is

something that is absolutely critical. Most of them were men, until I ended up spending a large part of my career mostly outside of the Commission working with and for Mary Schapiro. That was an awesome experience, but that was much later.

WT: We'll get to that, of course. You spent about nine years coming up through the Office of the General Counsel?

EW: That's right.

WT: '77 to '86, I have it down here.

EW: That's right.

WT: Could you tell me a little bit about your activities there?

EW: The General Counsel's office has had much the structure it has today since '78. In '77 we were jacks of all trades. The first thing that happened to me was I had to cancel my Thanksgiving plans, which I had been guaranteed I could keep. I arrived Thanksgiving week. I would never have done that if I had known that I was going to be forced to cancel my Thanksgiving plans to respond to a TRO. The next week, I was writing a memo to the Chairman on something. The next week I was doing an appellate brief. Everyone did a little bit of everything.

I will say that during that year I got assigned to the famous or notorious, depending on who you are, Carter and Johnson, 2(e), now called 102(e), professional proceeding, a very seminal case in the Commission's history. It took a lot of my time. I worked for Mike Wolensky doing that and learned more about being a litigator – which I think served me so well when I wasn't acting as a litigator. I started working on it in '77, and it wasn't over until 1981. As I went through the General Counsel's office, the case worked its way up through the Commission. That was a very interesting experience, the only time in my life I've actually examined a witness, actually.

I kept that case once '78 rolled around. The office was reorganized so that there were a group of people who did appellate work, which is where I ended up, and a group of people who did litigation against the Commission, plus the appellate work that arose out of the cases where the Commission was sued, and then a group of people who did, basically, advisory work. It essentially served as the Commission's lawyers, reviewed any recommendation that anybody else sent to the Commission for action. I ended up having the choice as to whether to work in the defensive litigation group or the appellate group and decided appellate litigation was really my cup of tea. I love appellate litigation. It doesn't have what, for me, were not-quite-the-right-fit attributes that trial work has.

That's when I started working for Jake Stillman. I did that from 1977 as a first-line supervisor. That was '78. Then, in early '79, I became an assistant general counsel. I worked for Jake doing that type of work, for the most part, although we also had other

things, for five years. Then, after five years, I became the head of the part of the office that did the advisory work that I always call the counseling group. I did that for two years before I went to Corp Fin.

WT: Do we want to discuss anything else from that time, or should we go on to Corporation Finance?

EW: Before we get there, one of the things that I would emphasize is that – unlike today (although hopefully we've rounded a corner) where the Commission has had so much trouble in the D.C. Circuit – at the time, the Commission's advocates in the D.C. Circuit and elsewhere around the country were very well regarded as among the best, not just in government, but among the best overall. I think it's important to realize that, and also to realize that I don't think it's because quality has gone down since then. It has to do with the ambiance, the construction of the D.C. Circuit, a lot of factors that are extraneous to the merits of the people who are doing it. The Commission had, and does still, a very talented set of litigators.

One of the things that Jake would never forgive me if I didn't mention that we worked on, which was fascinating to me – let me step back a second. What tended to happen was that you developed a niche. That happened by virtue of which cases you got assigned to. I got assigned to one case that had to do with the cross-border reach of the securities laws, and that became my area. I wrote several briefs about that. It's still a big issue today, although going in the wrong direction now, I think. There was just a Second

Circuit decision that seems to be following up on the Supreme Court's decision in *Morrison* that I don't care for.

At the time, there was a body of case law mostly coming up at the Second Circuit that was very forward-looking in that respect. I worked on a number of cases like that. Then, because of that, because we had worked on these cases, one of the things that Jake and I did together with some people is we wrote a commentary, about two inches think, I think, on a new draft restatement of foreign relations law. We went through it provision by provision, word by word, and wrote a really extensive commentary that took a fair amount of time. It was absolutely fascinating, and, I think, very important – and very characteristic of the Commission to devote that much time and effort to something that it could have just let go. The Commission was very conscious, and I think it always has been very conscious as an agency, of really seeking to affirmatively, proactively establish the law and have a hand in what the law is going to be. It's a project that Jake and I still talk about. I think I talked about it when I won the Douglas Award. Jake talked about it when he just won the Douglas Award. It was really quite wonderful.

I think, much as I loved appellate work, the two years that I spent as the head of the counseling group were unbelievably fascinating, because you had to be on your toes all the time. One morning you'd walk in – and I remember sitting at an old, clunky, pre-computer Lexitron machine – and in 45 minutes, Anne Chafer and Diane Sanger and I scratched out the provision that became the provision in the Exchange Act that said if it's conduct that would violate insider trading prohibitions in stock, then it violates it in

options, because we got a call from the Hill, and they said, "We need something, and we need it in an hour." And in the afternoon you would be reviewing an incredibly complicated enforcement case or a very complex rulemaking item that came before the Commission.

It was incredibly diverse, very intellectually stimulating. You always participated. You always sat at the Commission table. It's still true. Every week on the enforcement cases, we would probably write substantive commentary on 30 to 35 percent of them. It's many fewer today. Today there is much more of a reluctance on the part of the General Counsel's Office to speak to the policy issues than there was then. It was a unbelievable job, unbelievable.

WT: I'm most familiar with this period, of course, through the big insider trading cases and the work of Michael Mann and so forth. Was that what was driving that on your end of things, or were there other factors?

EW: No. This was before all of that. It started back in the early '70s or maybe the '60s. If you remember Bernie Cornfeld and all of the big scandals, the fraud cases, the straight fraud, blind-cheating, stealing people's money was where all the cases really started, and then it morphed into that. Michael worked with us very closely on the restatement work. He wasn't yet the head of the international office. That had not yet been created. That happened when I was in Corp Fin. He was the guy in Enforcement for global and international issues. We worked very closely on that. He was a major participant in that

paper. Then, of course, those cases then became the premise for other positions the Commission took.

The other thing that was true then, and seems to be much more true than it was in my tenure as a Commissioner – and I don't know when the change really occurred – is that we were very, very active participants in cases as amicus curiae, very frequently, when no one asked us, but when we saw the case ourselves. Now, with some exceptions, it tends to be more when the Commission's asked by a court to participate. I think, wisely, people appreciated then that the law could very well be made in private litigation, and, if you weren't there to say your piece, it might pass you by, and you might be stuck with it.

So we actually instituted a program, which Ross Cohen was the major moving force behind, when I was doing appellate work, where we tried to monitor the cases that were going up from district courts to the Court of Appeals. This was pre-computerization. It was a major undertaking, but we felt that we really should be out there looking for the cases that were going to shape the law.

WT: Should we move on to Corp Fin now?

EW: Sure.

WT: How did you go over there?

EW: I had always wanted to go to a policymaking division. Corp Fin was what I was interested in, maybe because of my background being a private transactional and corporate advisor-type lawyer. I had applied for at least one, if not two, senior position in Corp Fin when John Huber hired Cathy McCoy, who did a wonderful job. He hired her to be his deputy or associate director, legal. I didn't get the job.

I was very happy in the General Counsel's office and then this rumor ran around the office. Linda Quinn had been John Shad's executive assistant. She was going down to become the division director when John Huber left. Everyone said I was going with her, and I didn't know Linda very well. There was absolutely no truth to this rumor and I decided it was destructive, so I ran around squelching it.

WT: Where had she been in your office?

EW: She was in the Chairman's office. She had been in Corp Fin. She came in as an attorney fellow. Then she became, I think, the associate director of legal. Then she became what is now the Commission's chief of staff. We called it executive assistant in those days – probably the most powerful position in the Commission, in a lot of ways.

She was about to leave that job to become the head of Corp Fin. Everybody said, "You're going with her." I didn't even think she liked me. We had had a terrible disagreement over something one of my first days on the job where she said, "Your predecessor took another position, and you're stuck with it." I said, "No. If there was

some opinion by the General Counsel's Office written down somewhere, okay. But there isn't, and that's not my view." We didn't get off to a very good start.

So there was absolutely no truth to it. I told everyone there was no truth to it. They calmed down. Three weeks later, she called me and said, "I really want you to go with me," which was really odd. I was very excited about it, although I wasn't really yet ready to leave what I was doing, but I decided to go ahead. She offered me the job as associate director of legal, knowing that I had really never been a practicing securities lawyer, except as a baby.

I said to her, "My only hesitation is, are you hiring a deputy? Which is OK with me, but, if so, I want to know who that person's going to be, because if I'm not going to report to you, or I'm also going to report to a deputy, I don't want it to be someone I don't want to work for." She said, "I don't believe in deputies. I'm not having a deputy." So I accepted the job and I don't know how many months later, but it was less than six, she walked into my office one day and said, "I want you to be my deputy." I said, "Huh? You don't believe in deputies." She said, "Well, I don't believe in deputies, but I have one, and it's you, and I want you to be my deputy." That was pretty wonderful.

You talk about people who are mentors. Linda was a force of nature: very strong persona, and intellectually, one of the most creative, impressive, forward-thinking people I have ever worked with in my whole life. I've been lucky – if you look at my close friends today, most of them are people at one point or another I've worked with. Most

are people I became friendly with while I was working with them rather than vice versa, although there are some contrasts. Through working together, Linda and I became extremely close friends. That was a phenomenal job. She moved the division in so many different directions.

My only regret about that job was – and I knew it wasn't going to happen at the time – she said to me when I became her deputy, "Now, what we're going to do is, we're going to divide up projects, and I'll work on this rulemaking, and you'll work on that rulemaking." I thought, no way, she can't possibly let go. She never did – and we can talk a little bit about that later – except when I worked on the municipal securities rulemakings, which she had no interest in at all. I had to beg her to read the interpretive release we put together, which was enormously important and remains so today. I just wanted to make sure we didn't screw it up.

WT: What was the release for?

EW: It was put out in early '94. I'm sure you know there isn't the kind of regulatory structure for municipal securities that there is for corporates. Arthur Levitt, partly because – and I think he himself would agree with this – of his father's background as the comptroller in New York, was very, very concerned about the municipal markets. He wanted to improve the state of disclosure.

WT: I should say that I want to definitely focus on this, so if we're getting to it too early –

EW: Maybe we should hold that.

WT: Was the release about the 15c2-12 amendments?

EW: No. I worked with the people in Market Reg, principally Caite McGuire, who's really the author of the 15c2-12 amendments. Amy Starr and I worked on the companion anti-fraud interpretive release; the two created some secondary market disclosure. I shouldn't say more so. I think both, it was in tandem. We basically, without stretching the anti-fraud provisions, were able to send a very strong message to the market that people really had some obligations they weren't paying attention to. I think it was one of Arthur's greatest accomplishments. I think much more needs to be done in that marketplace, but it was something he cared so much about. It was the last thing I worked on before I left the Commission and has a lot to do with what I did when I came back.

The point I was making before was that Linda was incredibly hands-on. There was no way she was going to let one of her releases go without her fingerprints on it. Although I was sorry not to get a couple other things that really were mine, I knew that from the beginning, and I so enjoyed working with her. Phenomenal. To me, that was a fabulous job, because I got to work on the review of filings area, particularly when things were controversial or extremely important. I got to work on the rulemaking. I got to work on the legal and interpretive side.

For a kid whose basic knowledge of the working Corp Fin area was the things that were being considered by the Supreme Court (laughter), which was not really all that helpful, it was such a great way to learn things. People like Bill Morley and Mauri Osheroff and Abbie Arms, who grew up in that period of time, were phenomenal to work with. Bill was the chief counsel when I was the associate director of legal. The, he became the associate director of legal when I became the deputy.

WT: Bill?

EW: Bill Morley. When he had a difficult problem, he always called me boss. Otherwise, he never called me boss. He'd say, "Boss, we have to talk about X." I'd say, "Okay, Bill." "I know what the statute says. That was 1933. Let's work forward from there and see what we did that led us to this question."

That was amazing. I learned so much. He looked at these things again through the eyes of someone who didn't know everything that he knew, and together we were able to identify what had gone either slightly awry, or in a slightly unexpected direction maybe, thirty years before that had led inexorably to something that had now become a quandary. It hadn't been problematic before, but once you skew from the given path, it gets wider and wider and wider.

WT: Let's talk about some of the issues in corporation finance that were going on. You were there for a full eight years. It's broad ground to cover.

EW: Yes. Revolutionary things like 144A, which we proposed and adopted; Reg S, somewhat more of a mixed bag, but extraordinarily important; the rewrite of the proxy communications rules; the rewrite of the 16b rules where I was naïve enough to think that we could do something simple, and didn't really succeed in doing that all that well; the EDGAR rules.

One of the things I liked least that I did when I was in the General Counsel's Office was I was given the task, me and my folks, to determine whether the Commission could legally require electronic filing. It was clear that, from the Chairman's point of view, the answer was yes. It had to be yes. But it wasn't clear until we looked at it that the answer, indeed, was yes, as it turned out to be. It was an arcane, kind of boring project, on which you were under enormous amount of pressure to come out with the right answer, which of course we weren't going to do unless it was correct. I was so glad when that project was over. Then I go to Corp Fin and one of the first things that I end up working on is the EDGAR rules electronic filing, and I thought, "I thought I got away from this and here it is rearing its ugly head again."

We did all of that. You know, what didn't we touch? Streamlining things for small business, executive compensation disclosure (the fifteen-year cycle project that always comes back), the disclosure requirements for foreign issuers. It was the time that people first started talking about working towards one set of accounting standards globally. It was in the days when IOSCO was first starting to become active. The only place that

anything really substantive was being done in IOSCO was in the working group that Linda chaired where there actually were agreements reached about basic disclosure requirements. There was tender offer litigation that we worked with the General Counsel's office on: unconventional tender offers, rules relating to tender offers, rules relating to going-private transactions. It really was everything, from soup to nuts – incredibly challenging, very important, and lots of fun.

WT: When you came in, it was in that era of the big corporate takeovers. Did that have a major impact on the things that you were working on?

EW: Yes. At the time, the Office of Mergers and Acquisitions was called the Office of Tender Offers. They were incredibly active. Particularly before some of the law was settled about what was or was not a tender offer, they were right in the midst of all those things. Of course, that was the time period in which shareholder proposals, a lot of them revolved around anti-takeover devices and the like. It was very, very interesting, absolutely fascinating. It was when David Sirignano was the head of that office, and he did a phenomenal job.

WT: I know that when Richard Breeden became Chairman, that was one of his priorities, wasn't it, rolling back the restrictions on shareholder activism that had come up in the wake of those?

EW: Yes. It's very interesting. There are times when your family and your job converge. My husband, at the time, was litigating, something he hasn't done for years and years. He was involved in a case where he was out of town all of the time, a case that literally settled on the courthouse steps. We were working on the proxy rules, particularly the shareholder communication rules. I don't remember exactly how old my two little kids were, but they weren't very old. My guys were born in '81 and '84. I would take them to the office with me sometimes because I just had to go. I would stop by a video store and rent videos and somebody would bring down a TV with a tape player attached to it and they would sit in the office and watch.

Showing you that they spent a fair amount of time there, my older child, who was probably about nine or ten, came in once and said, "Mom, I've drawn a political cartoon," which was pretty phenomenal, because he couldn't draw at all. He shows me a piece of paper. I wish I still had it. I probably do in some box somewhere. It was a pencil drawing of a shareholder, identified as a shareholder, with a big hand coming out of Uncle Sam over his mouth and some commentary about getting Uncle Sam to get out of the way of letting people talk. (Laughter) I thought, "Oh my God, what this child does absorb by sitting in the office!"

WT: That's impressive.

EW: It was pretty impressive. (Laughter) Richard was pretty funny with the kids. It was also the time when he was very big into the international matters. There was a Japanese

journalist who came and wrote a book about all of us. None of us ever understood it, because nobody read Japanese, but it had everybody's picture, and it said who you were and what you did. Richard pulled it off of the shelf one day when my kids were around. He said, "Look. I want to show you this." They came over. He said, "See? This is your mom. It says she has this job." They're nodding. He said, "And it says she's really wonderful, except for one thing." They said, "What?" He said, "Her children don't listen to her at all." For about thirty seconds he had them, and then they said, "Oh, it doesn't say that." (Laughter) It was pretty funny.

WT: Let me ask you about things at the Commission level at that time. What other priorities were there coming down from them? Of course, you worked under quite a few different people there.

EW: First, I should say that the Commission that was there when I got there was unbelievable. Harold Williams was the Chairman; Roberta Karmel, who was was more conservative than others, very smart; then, the other three slots were occupied by John Evans, very thoughtful, smart economist; Phil Loomis, who had been the Commission's General Counsel and reputedly was able to put his feet up on a desk and dictate, down to the punctuation, perfect prose. There are any number of people who will tell you that's true. I can't prove it or disprove it.

Then last, but certainly not least – and the person that I've always said I wanted to be when I grow up, since I don't really think I'm grown up yet – Irv Pollack. Unbelievable.

The level of discussion was vigorous, and it was smart, and it was collegial. You did have the same problem you have today, which is the worst thing I would identify, that the Sunshine Act keeps you from really having a collegial discussion of most policy issues, unless the world is coming to an end, when you can invoke an exception. At the Enforcement table, meetings that can be closed to the public, it was really impressive.

Because I was in GC, I had two great advantages. At the time, the Commissioners were on the same floor as we were. Now there's this thing about, "Ugh, I have to go up to the tenth floor." They were right there. I also had the opportunity both as a litigator and even more so when I was in the counseling group of interacting with them all the time. Nobody, to me, will equal Irv and his instincts for getting to the heart of a matter and the man's incredible integrity. I had the pleasure of helping to prep people for their Congressional hearings."

I remember the first day I met Aulana Peters. We all thought we have just died and gone to heaven. I could just tell. Unbelievably talented people who cared so much about the mission, and who understood what it meant to work in a multi-member body.

I guess we're all like this. When you're younger, those were the golden years. There were very different Chairmen as I went along, including people like John Shad, with whom I don't think ever agreed on anything. I worked with him very closely, loved working for him. The best thing about John, in addition to his deeply embedded sense of right and wrong, which is probably why he gave so much money to build an ethics

problem at Harvard, is he didn't surround himself with yes people. He surrounded himself with people who would tell him, "No, John. Don't do that. We don't agree with you," and he'd listen. He'd do what he wanted, usually, but he was a phenomenal person to work with.

It was really pretty interesting. Early in my tenure at Corp Fin was the first time I said to people, they said, "Well, what job would you really like to have?" Actually, Arthur Levitt started this. He took three of us. By the way, it was Colleen Mahoney, Matt Chambers, and me. We were three people who were not at the division director level. Shortly after he arrived, he took us out for Chinese food and asked us each what we really wanted to do at the Commission. I said, "Well, what I'd really like to do is be a Commissioner," which all of my colleagues thought was weird. "Why don't you want to be a division director? That's a much better job." I felt like I was close enough to being a division director working with Linda, because she listened to me. Not that I didn't want to do it. I would have liked to be a division director. The more I thought about it, the more I thought that my goal was – not that I thought it would ever happen – to be a Commissioner.

WT: What time do you want to wrap up, by the way?

EW: I'm good until about five.

WT: Terrific.

EW: Just to give you some flexibility.

WT: We're nearly an hour in, and we're still in Corp Fin.

EW: I do tend to babble.

WT: It's terrific so far. Let me get into the municipal securities issue, then. When did you first become involved with that?

EW: It was probably '93. Chairman Levitt turned to Corp Fin and Market Reg and said, "You've got to do something. You've got to fix this." 15c2-12 was already on the books, but it didn't do what it does now. The first area where he got interested, I think, was pay to play.

WT: I know that David Ruder had had some interest in it; Rick Roberts had had some interest in the subject. Had it crossed your way when they addressed the issue?

EW: I knew about it. I knew it was of interest. Pay to play wasn't a Corp Fin issue. It didn't really belong to us. It was really when Arthur turned his attention to the disclosure issues, which crossed lines between Corp Fin and Market Reg, because the only hook we really had was the securities professionals. That, of course, is the genesis of 15c2-12. There have been a whole series of Chairmen of all varieties of philosophy about

regulation, who have felt strongly about muni market issues. That's one of the things that's very interesting about this. For example, Chris Cox, who's often thought of as being very deregulatory, was very interested in fixing the municipal securities markets and in getting legislation to do it.

Clearly, people wanted legislation. People thought the issue was the Tower Amendment. It's not. The Tower Amendment doesn't keep the Commission from doing what it needs to do. It's the lack of authority over municipal securities. So Chairman Levitt basically said, "Do something. Fix this." He did this with pay to play and he started us on the path of doing it with respect to disclosure. We pursued it at our level bringing in industry leaders and knocking heads together in a semi-gentle way, but convincing them that they really needed to do something.

One of the things that fascinates me about the government is, if you assume for a second there are no restrictions on authority – and in many areas, unlike this one, there aren't as many as some people would like – that doesn't mean you can do anything that you want. People used to say that particularly about Corp Fin rulemaking, because our constituency was so diverse and diffuse. The lobbying effort, in a loose sense, against things you wanted to do, you wouldn't think would be powerful.

But rulemaking isn't like that because of the Administrative Procedures Act, which I think, at base, is a wonderful statute, unlike the Government in the Sunshine Act. Rulemaking is done in a very responsibly confined sort of way. If you put out a rule

proposal that people hate universally, even if it's just the people who are going to be subject to it that hate it, you won't adopt it. It won't get voted for, or it'll get challenged in court and dragged through the muck, and then even if you win the challenge, it'll be so many years later at that point you'll need a different rule than the one you drafted.

There's a dynamic that operates that means that it's very, very important to engage people who care about the issue on all sides. Interestingly enough, the Federal Advisory Committee Act, among others, makes that hard to do, and yet it's extremely important to do. It's important to do it outside the formal rulemaking process. I don't mean instead of, and I don't mean to hide what's going on from anybody. But if all you get is a formal rulemaking letter, and you don't engage with people and have a dialogue, you can't bring things to a reasonable conclusion.

Arthur was very good about starting policy initiatives by making it clear to people they needed to engage. That's a large part of the battle. It's a lesson that I learned while I was at the Commission, that I tried to carry on once I left and came back, is get people in a room, try to get them to engage. Because once you have them join a group, they develop an affinity for the group. Most of the time, they decide they want the group to succeed. That's very, very valuable. He did all of that. We spent untold hours with municipal securities issuers and professionals in the marketplace trying to convince them that these changes to 15c2-12, or some changes, were a good idea, of if they weren't a good idea, they could live with them.

It's interesting, because you see things that happen. We knew at the time we did the changes to 15c2-12 that the NRMSIRs – the repositories, the places where people were going to send their information – we knew having multiple NRMSIRs was a terrible idea. But it was clear that the community wouldn't tolerate a central filing place. It just wouldn't have happened.

We thought, "Okay, so we'll do this thing that's going to be awkward, not that effective, but let's get this on the books." Sure enough, over the course of time, everybody said, "Well, this needs to happen in one place." Well, we knew that from the beginning, but it took about a decade for that to happen. Now that it's happened and EMMA exists – and I am one of the biggest fans of the MSRB's EMMA system, maybe the biggest – it really works. It needs to continue to get better, as the MSRB recognizes, but it's not the fault of the MSRB. It needs to move forward, but it's a phenomenal repository.

I think Chairman Levitt got it from his dad and I got it from him. The municipal securities markets are huge. Much of what I would say I would expand to the fixed income markets, generally. We have spent inordinate amounts of time, well-deserved time, on the equities markets and structuring and restructuring and tinkering, and there is no structure in the fixed income markets. I don't think we need a structure like the equity markets structure, but certainly we need greater transparency, and slowly but surely we moved towards that, but there still needs to be more that should be done.

Yet, no one has had the time. Maybe it has to do with the fact that there aren't that many people who are expert in this area who are really interested in the regulatory aspects of it. The time has not been spent to really do a deep dive. What we did in the Municipal Securities Report we put out in July of 2012 – I wouldn't call that a deep dive. It was a dive, but I wouldn't call it a deep dive. There's so much more that needs to be done and there is not enough time to do it. It also never seems to make it to the top of the list, because it's something that's going to be very time-consuming. I think it really needs to happen.

There I go. I leave the Commission. I left the Commission in October and went to work at the CFTC.

WT: This is 1994?

EW: 1994, as Mary Schapiro's General Counsel, the only General Counsel of a federal agency who had not read the statute before she took the job. (Laughter) Career moves are interesting. It was one of the greatest things I ever decided to do.

WT: Can I ask about how you got to know Mary Schapiro?

EW: She was a SEC Commissioner. I think Mary arrived in '86. She was very controversial when she arrived. Mary, unfortunately, has never gotten as old as I am. She's five years younger than I am. She never catches up. She arrived. She was thirty-two, maybe

thirty-three. She was very young. She was from the futures industry. There was an incredible brouhaha, particularly amongst the securities bar. Who the hell is this woman? Why does she have the nerve to think that she could occupy this position? She doesn't know anything. She's going to be terrible. We probably absorbed some of that on the staff at the SEC. I don't remember people being that outraged, but she was a focal point of curiosity. There she was. She's the youngest person who's ever been appointed to the Commission.

She came and she did her homework. She learned about all aspects of the securities arena and she became everyone's favorite Commissioner. She was thoughtful. She listened. She engaged with the staff as if they were her equals on an intellectual level. Everyone adored working with her.

I didn't know her that well. She was a Commissioner. I worked with her. I reviewed her speeches in the Corp Fin area when they asked me to do that. She and Michael Mann, who's also one of my dearest friends, were going on a trip to Buenos Aires for COSRA, which is the north-south securities regulators organization, the Americas. Michael asked Linda if I could go. She said, "Why? The topic of this meeting seems to be market reg." He said, "Because she's smart, and I think she could be helpful." I remember one of the things he and I did was crawl on the floor to plug in the printers and things like that because nobody could seem to get anything to work.

I got to know her a little bit better on that trip because we were a very small contingent. I knew her some and I knew her staff some. If you'll recall, Mary was held up after she was named to be chair of the CFTC because Jesse Helms had some problem with some EEO thing at the Department of Agriculture. She sat at the Commission for six or eight months after her confirmation hearing waiting to be confirmed. Steve Luparello, who also went with us, who was Mary's executive assistant or chief of staff at the CFTC, who was one of her counsels at the SEC, came in to see me one day with a corporate government speech and said, "Would you read this?" I said, "Sure." He said, "You know, Mary's really worried. She's not getting confirmed, and she's worried that nobody will want to go with her." I said, "Oh, that's so foolish, because everybody adores her. They think she's fantastic. She's done such a wonderful job here."

Then, opening mouth inserting foot, perhaps, I said, "I've even thought about raising my hand," something I hadn't realized I'd thought about until I said that. And he said, "Well, as a matter of fact," and then I realized that's why Steve had come to my office. We talked about what job might be suitable. It seemed, given my lack of subject matter expertise (laughter), that the more technical jobs didn't make any sense, and that was the job that made sense.

It was incredibly challenging, less because of the law – the law was not easy and it, at the time, was a horrible law to administer, because there were two choices: you were either on exchange, or you were dead – but what was really challenging was the cultural difference between the two agencies at the time. I always used to say that, at the time,

the CFTC had the personality of an abused child and was really reluctant to be proactive. Mary – and the rest of us, too, because several of us left with her, left after a year and a half – were really sorry to go, had it not been for the singular opportunity she was offered to head up what became FINRA. You know, it was going to take five years to turn that around and get people comfortable. They always felt that every time they stuck their necks out, it got chopped off.

WT: There are a couple ways that I would speculate on that. First, there's CFTC, and of course the main bodies are in Chicago, the Exchange and the other one, right?

EW: There used to be two, and now there's only one: the Merc and the CBOT.

WT: Right. That's it, thank you. Then, of course, there is the conflict between the CFTC and the SEC over derivatives and options and that sort of thing. Of course, I know that that's the ongoing, pressing issue.

EW: I think all of that is true, but I think the focal point was really the way the statute was put together. The statute itself was a political compromise. It was a creature of the '70s. I always said, you could tell the difference at the time – I don't think this is true anymore – between the SEC and the CFTC by looking at their seals. You look at the SEC seal, and you see the New Deal. You see proud, "I'm going to take on this job and I'm going to go out and do it." You look at the CFTC seal, and the thing that occurs to me is disco. It lacked the very proud New Deal history. All you have to do is walk into the room every

year when they give out the Douglas Award and you see all these people who, on Monday morning, will be fighting with the SEC again, who are so proud of this institution, its history, and the role they play in it. The CFTC didn't have that, since it came up through the Department of Agriculture, and it came up with agricultural products. It really wasn't until the early '80s that it went into financial products, and it was treated as the kid sister. It was hard. It was really, really hard.

The CFTC, it became apparent to me, had something, though, that the SEC hasn't had until recently. That is, it truly thought about things, not just from, but also from an economic perspective. The SEC has not done enough of that, historically. It's doing it now, great credit to Craig Lewis, who had his going-away party yesterday. The agencies, if you looked at them objectively, had different strengths and weaknesses. That's one of the reasons I've always thought it would be a good idea for them to merge, not for the SEC to swallow the CFTC, but to use the strengths of both.

But it was tough. I remember literally saying to somebody, "Why don't we do X?" "Well, we can't do that." I said, "Why not?" "Because we may not succeed." I said, "So? Sometimes it's worth failing if it's important enough, and you're certainly going to fail if you don't try." This person looked at me and said, "You don't understand. You are at the CFTC now. You're in the caboose." (Laughter) So it was tough. The SEC never would have had the right kind of controls over tender offers that it did if it had that kind of attitude. We were willing to take risks.

WT: Of course, the previous person at the CFTC had been Wendy Gramm, who was not exactly the most activist regulator.

EW: No, but you're talking about an agency that had existed since the mid-'70s. It had a very small staff and a lot of the senior people had been there since the beginning – incredible expertise. They, of course, like any staff, had a variety of points of view about how pro-regulatory or non-regulatory you should be. But they weren't a whole agency full of Wendy Gramm acolytes. I certainly didn't expect anything different from Wendy Gramm. That was her heartfelt position. But these were people who would have liked to have done more. They agreed with the ideas. They just didn't feel able to do anything.

I think they learned a lot from Mary, not even just when she was like that. But if you look through the Leeson/Barings fiasco and what was happening in Asia, she spent day and night on the phone with people around the globe making sure that didn't fall apart, and they saw somebody who had it all together.

Mary was very unusual in the sense that, particularly as Chairman of the CFTC – I remember watching her at the President's working group with all these brilliant people. But she had something they didn't have, not that she's not brilliant herself. She had the high-level ideas that they did – and she knew the details. She'd worked her way up through the ranks and so she knew the underlying mechanisms about which buttons to push. That gave her an incredibly important role to play in those discussions, not because they were really talking about what buttons to push, but she knew what would work and

what wouldn't when you were talking about ideas at the 20,000-foot level. That was a phenomenal experience.

WT: Let's talk a little bit about your particular position, General Counsel. What was on your plate while you were there?

EW: I had a relatively small office, did all the appellate work. Like the SEC's General Counsel's Office, the CFTC's General Counsel's Office writes all the opinions for the Commission. We did a fair amount of legislative work plus all of the legal interpretive issues. We were really focused on swaps, their status, how to handle them. We were going to loggerheads with the industry.

One of my seminal moments as General Counsel was a big meeting with an industry group. I said to them, "I need to understand this better, so bear with me for a moment and assume, arguendo, that a swap is a future. I want you to explain to me, work it through with me, why that's such a horrible thing and all the pragmatic difficulties and what would happen." The fellow who was the main spokesperson for the industry went out of that meeting and told everyone in the world that the General Counsel at the CFTC had said swaps were futures. I was hysterical. There was someone I knew very well, a lawyer who did a lot of regulatory advisory work, who called me up and said, "I just heard this." I said, "I know. I'm hysterical. I didn't say that." She said, "What do you care? He just made you one of the most powerful people in Washington." (Laughter)

A lot of our time was spent on swaps, hybrid instruments and how do we make them fit, and what rulemaking authority did we have before the statute got amended to make it easier to operate under? Our time there was too short.

WT: What was the status of the debate at that time with swaps and derivatives and all that? It had been going on for some time before that.

EW: It'd been going on for some time, but it was still sort of: they can't be anything, we don't want them to be securities. It was awful. Any instrument that came up, there was this pitched warfare between the SEC and the CFTC about whose side of the line it was going to be on and how you were going to divide the turf – another reason I think merger is good – it's a waste of time. There isn't much time spent on it right now. Who knows what'll happen in the near or far term. There was a lot of infighting about that, perhaps best illustrated by the fact that at the SEC we always talked about the Shad-Johnson Accord, and at the CFTC we always talked about the Johnson-Shad Accord. Whose name was going to be first was something people were still worrying about, so it was tough. It was a little less tough because the CFTC, at the time, was populated by SEC people, so at least we were people that the SEC were willing to actually have a real conversation with. That didn't mean we could resolve the issues, but at least we had a leg up because we were members of the club.

WT: As long as we're on the topic, let's talk a little bit about what happened after you left. First, there was Brooksley Born at the CFTC, then, of course, the 2000 Commodities Modernization Act.

EW: The Commodity Futures Modernization Act. Lovely statute.

WT: Were those things brewing while you were there?

EW: They were working their way up to be brewing. They were brewing, but they hadn't really reached the crescendo that they did. There were days early on at NASD when I thought, "Why didn't I stay?" Chairman Born never made any headway. Maybe that was because of the type of approach she had. She was absolutely right and everybody else was absolutely wrong. She really was vindicated, but people forget that.

I watched SEC Chairman Chris Cox testify on this subject. Some Senator or Congressman said to him, "Well, why didn't you do something about these instruments?" He said, "I didn't have the authority. We don't have the authority." He said, "But why didn't you do something?" He said, "Let me make this perfectly clear. In the Commodity Futures Modernization Act, you made clear that the SEC and the CFTC – you specifically said: no authority." Whoever it was looked him straight in the eye and said, "But why didn't you do something?" (Laughter) Nobody remembers anything except what they want to.

So, that was brewing, but it hadn't really reached a crescendo.

WT: The battle lines were not –

EW: People were lining up and there was jockeying around the line, but it really hadn't crystallized in the same sort of way.

WT: Should we move on to the NASD, then?

EW: Sure.

WT: Did you get there after the 21(a) report?

EW: After the investigation, during the period of time when the 21(a) report was being produced. Basically, part of the deal was that NASD promised to reinvigorate the regulatory program. A decision was made, a wise decision, that Mary Schapiro was the right person to do that. She was confronted with the notion of: was she going to stay and finish what she wanted to do at the CFTC?

WT: Who asked her to come there?

EW: The NASD did, Joe Hardiman and the board. I'm sure that the SEC, behind the scenes, had a fair amount of say-so about whether or not that was a good idea and liked it. They

offered her the job and she decided she had to take it, because being the second person to head the new regulatory program at NASD wasn't going to be even in the same ballpark as being the person to really shape it. She asked a number of us to go with her and we did.

It was fascinating because, first of all, from a psychological point of view, we identified with the regulators. There we were being essentially treated like the enemy. The thought was that this organization had failed so badly. And there were many things that were wrong and some things that I believe to this day the SEC got dead wrong.

WT: Who was viewing you as the enemy? Sorry.

EW: The SEC. It was very funny. I wasn't very involved in the final negotiations of the content of the 21(a) report. I attended a few meetings. We'd walk in, and we'd be treated like the devil incarnate. I remember one meeting where we discussed the fact that the SEC staff people had asked for a change in one of the documents, and whatever the issue was appeared seven times, and we missed one. Either they told us or we told them we missed one, and we were treated as if we had done this deliberately. We had some Machiavellian plan. We're sitting there. I didn't believe it. I had been told by my new colleagues that this was the attitude. My reaction was, "That's ridiculous," and there I was, sitting in that room being treated that way.

WT: Was this merely because it was an SRO, or was it because of the odd eighths controversy?

EW: It was partly because it was a really big matter, partly because of some of the personalities of some of the SEC staff people who were there, partly because of other relationships behind the scenes. It was awful.

So we were sitting in this meeting and they decided the SEC staff, among themselves, had to discuss something. We were asked to step into somebody's office and wait to be called back into the meeting. While we were sitting in that office about six SEC staff people walked by, glanced in, saw me, came in, gave me a big hug, a kiss, asked about my family. Go back in the room, and again, I had grown horns and turned red, and I was the devil. It was bizarre.

There was a great deal of distrust, probably because of other things and because of things that were misunderstood. They really thought that the inmates had taken control of the asylum. The industry had taken over the regulatory aspect. At the time, industry people authorized disciplinary cases, sat on the panels to decide disciplinary cases, which they still do, but not completely. The SEC thought that the industry participants were squelching great cases. My view when I got there – and I had always been a believer in SROs, more from the abstract, high-level view – I got there and it became very clear to me that the problem was exactly the opposite. In fact, the industry people just let any

case go by – stupid, picayune - it just all went straight through. There was a big problem, but it was the wrong problem. It was backwards.

On the other hand, the changes that NASD was being forced to make were really good ones. Having majority public on the board, as long as you still have the industry expertise recognized on the board, is a great change.

WT: Can I pause at that for just a second? Of course, I've talked with a number of people at the MSRB. The opinion there is that there actually isn't that great of a difference between the public members and the industry members. I'm gathering now that this is not the case for the NASD.

EW: Yes.

WT: Maybe you disagree.

EW: Maybe it's a difference in the people, I don't know, or who has an interest in the area. It's a little bit like going back to the tale I told about Bill Morley and me. I had this high-level construct but didn't know any of the underlying technicalities or how it operated. Now, you have a variety of public people on the NASD board, from securities law professors of great renown and people who don't have that big a practice in the securities law arena, to truly public people who are businesspeople. Jack Brennan's a public member. The difference is in viewpoints.

One of the things that happened is that the industry board we had when we first got to NASD before these changes were put in place was a real, working-level board in that they worked through the details of rulemaking. They were very valuable, but they were down in the dust and they didn't always have an overall public policy point of view. I think that the combination of industry people and public people has brought that to bear and has been extraordinarily positive.

Now, as I say, I would probably actively lobby against, or express my view against eliminating the industry representation, because you need people in the room who understand how it works. In fact, doing rulemaking at NASD, that was one of the most striking contrasts I saw, which is that before you put the rule together, you had the benefit of industry expertise. For example, we did a rule while I was there that required you to tape conversations with customers if you acquired a certain concentration of people from bad firms that had been kicked out of the industry for sales practice violations. Industry hated that rule. Everybody kept telling us they hated it, they hated it. We kept saying, we're going to do it, we're going to do it, we're going to do it.

Then we sat down with one of the industry committees and they said, "It won't work." We said, "What? What do you mean, it won't work?" They said, "This information over here and this information, this isn't going to work. It's just not operational. It's just not going not work." We sat down and worked through with them a way to do exactly what we wanted to do that they still hated, but it worked the first time. It didn't get put out

there and get criticized because it didn't work, or go into effect and it didn't work. That kind of insight, that operational point of view, is really extraordinarily valuable. There's no point in having a good idea if it doesn't work.

We saw that change, the changes in the disciplinary committees. I did a lot of work when I was there with the National Adjudicatory Council at the appellate level – really positive. Virtually every change that came out of that 21(a) report was positive, and I think I was a pretty objective observer. We were coming in. We weren't tarred with any of this. We were the fixers. We were going to be the great people to set it all straight. A lot of it was wrong and I think that served me well, when I came back as a commissioner, to remember.

It's a little bit like when I was at Yale, and the Black Panthers were on the green in New Haven. I was too chicken to go down there. My mother said, "You have to come home. You're in an armed camp." I said, "I don't know. I'm sitting in my dorm room, and the bluebirds are singing." (Laughter)

The mandated changes were really good, and then there were changes we did ourselves. For example, with disciplinary cases, they were going to be authorized by the staff. One of the things I think you learn, one of the great benefits of being an enforcement person, or having enforcement people or litigators, is they become very attached to and passionate about their cases. They're not necessarily always absolutely objective. If we

weren't going to have an authorizing body, we were going to lose something, so we created an internal group which actually reported to me.

WT: You were the chief operating officer? That was your position?

EW: Originally. I had different titles. I don't know that my jobs were ever very much different. What I didn't have is I didn't have any of the enforcement people or the exam people directly reporting to me. We had this very small group of people and their job was to review every case, make sure it was legally sufficient, make sure it was okay. I didn't get involved in all of them. I only got involved in the ones where it got kind of hot and heavy with a lot of yelling back and forth, but that was a very wise thing to do. That wasn't required by the 21(a). It was something that the organization did itself as another check and balance, because there was something that was gained by eliminating the industry authorization. There was also something that was lost. This was a way to retrieve it and get that objective eye. We went through an incredible number of changes until we then went through more incredible changes when we merged with the New York Stock Exchange regulatory group.

WT: I suppose there are any number of issues in the market that we could talk about. Do you have any notions of where we should begin? There's the removal of the Glass-Steagall restrictions. There's the increasing introduction of technology into trading. I don't know which one would be most pertinent from your perspective.

EW: Both are important. When I became Chairman of the SEC, people said to me, "It's time for you to give a speech. What do you want to speak about?" I said, "Technology." They said, "What?" I said, "Yeah, technology." (Laughter) There were three different ways technology needed to be the focus of the Commission, as I said in that speech, and I continue to think that.

One is with respect to the market technology and really getting a handle on it and getting those issues right, whether it's from the point of view of having the right controls like Reg SCI or deciding what the right answers are to high-frequency trading. Do you need to establish affirmative market-maker obligations if, in effect, you're serving a market-maker, or have people pay for the market capacity that they're occupying or any of a number of different things? I don't have the answers, although the SEC will come up with some recommended answers soon, I hope.

Getting control over its own technology, which the SEC is getting better and better at, and things like the consolidated audit trail – it's absolutely appalling that it does not already exist – which, in my view, in the best of all possible worlds would include all financial instruments and would be global. That statement ignores a lot of hard issues, but I do think it's the right answer, and one should grapple with those issues.

Then perhaps my favorite, because it gets left behind, is really grabbing the benefits, channeling the benefits of technology for the benefit of small investors. Some of that has been done, more by FINRA, really, than by the SEC, in terms of the various tools that

FINRA has on its website, doing summary prospectuses with hyperlinks. But there needs to be a lot of hard thought given, particularly with input from behavioral finance, into how to harness financial technology for the benefit of investors. Institutional investors will do it themselves, but retail investors won't. Part of the answer is they mostly invest through institutional investors these days, but that's not good enough. That's a cop-out, I think. I think that is unbelievably, incredibly important.

WT: There are also issues such as high-speed trading and the like, too.

EW: Yes, I hadn't gotten to the point where I knew what the answers were. It really is true. It is not an excuse for the people who say that there's evidence that it's helpful in addition to evidence that it's not so helpful. That is absolutely the case. It needs to be figured out. It does need to be figured out.

It's a very interesting issue, because there are very smart people. I was listening with someone to something on TV and they were talking about co-location. They were talking about Michael Lewis's new book. This extremely bright person said to me, "Well, it's a problem." I said, "Well, you can say that, but let's prohibit co-locations so you can't be any closer than a mile. So who gets to be at the mile, and who gets to be at the mile plus an inch or the mile and a foot or the mile or two miles?"

WT: Because it will come up.

EW: It's the same issue. The issue will not go away, so that can't be the answer because it won't solve the problem. I suppose you could require everybody not to have a time advantage. What are they going to do? I guess they build in delays in there. I don't know that that's the answer either. It's something that deserves the attention the Commission's giving it and I'm really looking forward to seeing what they come up with.

WT: From where you were, were there any issues to deal with when NASDAQ got separated off from NASD?

EW: Surprisingly few. It was interesting because, when we first got to NASD, it was hard to get technology attention. We had to create our own technology program in order to make sure that we got the kind of concerted attention we needed. Then it ended up, as things got established better, getting merged together. We knew that was the big challenge, to make sure we were going to be able to stand on our own two feet. We had been through the mill on that. It was absolutely the right thing to do, and, I thought, a very positive move. I would not have been as positive about it had we not had the regulatory services agreement where NASD ended up doing the regulation for NASDAQ because that was the whole point.

Issues would come up from time to time in lower-level ways. Smart people always want to find new things to do and to make themselves more financially self-sufficient, so people would periodically come up with projects that were more business projects than regulatory projects and get enamored of them and push them and successfully get them

approved. Then, after a little while, people would say, you know, we're really supposed to be a regulator. We really shouldn't be doing those things, and it would all tie back in. I think that transitional phase has largely gone away because I think the great benefit of NASD is its neutrality. It doesn't have that business to run on the side.

WT: Within the scope of the NASD, I mentioned earlier the removal of the Glass-Steagall restrictions, and we mentioned even earlier than that the Commodity Futures Modernization Act. In a deregulatory environment, so to speak – it sounds like maybe not the most sophisticated question, but what's it like being a regulator in that kind of environment?

EW: It's always discouraging to have people beat on you, but when you grow up as a regulator, you're really used to it. People are yelling at you for not doing enough and they're yelling at you for doing too much. I think after a while, if you're good at it, you develop somewhat of a thick skin about all of that. You also see cycles and you realize that this'll go away; you'll be in a different cycle.

The one that disappointed me was after the financial crisis. My view was we would have three years to get things done, to get the resources we need to get things done. It didn't last anywhere near that long. That was kind of heartbreaking, because with three years, even though we failed to get self-funding (although Mary was very close), we could have put ourselves on a better base to move forward. It was shocking that people's memories

were really that short. Now, the only thing people can seem to remember is not enough people went to jail. It's kind of sad.

But these things are all cyclical, so if you're not getting beaten on by somebody, usually by both sides, you're probably doing something wrong. That was my attitude. It's much harder when you're running the organization, because the core of the employee base doesn't really recognize that, so you must be up to the challenge – which is very, very difficult to meet – of communicating that you as the leader of the organization are proud of what they're doing, they're doing the right things.

That's one of the reasons morale has been so bad at the SEC over the last few years. I started in this business a long time ago, so I've had a long time to learn how to react to these things. Someone who's seven to ten years out of school, unless they're just an extraordinary kind of person, won't. They'll look at, here, this is my life's work. I'm making half or a third of what I could make in the private sector, and yet everybody thinks I'm doing a bad job.

WT: You've essentially lived through a couple of different shocks. I know we've been talking about the recent one, but then of course in the early 2000s there were the corporate scandals.

EW: That's a little different. That hits – you got the, "Why didn't you catch this?" But the SEC is not in charge of corporate America the way it's in charge of the mechanics of the marketplace and the people who operate in the marketplace.

WT: Of course, you were at NASD at the time, too. That's even further removed.

EW: We had one while I was in Corp Fin, too, the Charles Keating matter. We did that, the savings and loan crisis, but it was more confined and it wasn't like we were in charge of the whole thing. This feels like, "You let us down. You were in charge of the whole thing."

Although, when one really looks at the arch of the financial crisis, it comes from the banking end of the business, not the securities end of the business. Not that the securities end of the business didn't contribute mightily – it did. But if people hadn't given out the stupid mortgages they'd given out, they wouldn't have been there to securitize. It's hard to know why for a while in 2008-2009, the SEC seemed to be the butt of the criticism. Mary's finest accomplishment is that the SEC still exists because there really was a period of time when it looked like that might not be the case. That would have been a real loss.

WT: Let me get a little bit further down in scope, but perhaps not too much further down, and talk about various jurisdictional issues. We might use the broker-analyst conflicts, for

example, and how you divvied that up between what was at the time NYSE Regulation, the SEC, and so forth.

EW: Not well, I think. It's one of my bugaboos that I don't think has been resolved that I think we have much too much regulatory competition in the enforcement area. I understand it. It's human nature. People always say, "Well, where were you? So and so brought a case. Why didn't you bring a case?" I have always thought there should be a grand – it would of necessity have to be loose – agreement as to how to divvy up issues when there's overlapping jurisdiction. There are a lot of problems with not doing that. Some of it has to do with horizontal equity. Why did you get slammed by the SEC, which is a bigger deal than getting slammed by FINRA?

Even more important than that, in an era, which will always be the case, of limited resources – and I think the reliance on governmental resources is going to be more and more extreme as private rights of action get cut back, then squeezed and cut back a little bit more – you can't bring all the cases that should be brought. You certainly can't bring all the cases there are, but even once you cut them back to the cases you identify as the cases that should be brought, if you're trying to bring them all, you're going to fail. If regulators brought different cases, there would be more coverage.

This strikes me as being a complete no-brainer. Maybe if I'd been willing to sign on to be Chairman for longer and if, which is an even bigger if, the White House had chosen to give me the job, I could have devoted years to trying to bring that about. But nobody

seems interested in doing it except me. I've often been baffled by that, because I think this notion of the New York people always trying to beat people out – and the SEC brought the case but the CFTC didn't, or the CFTC brought the case and the SEC didn't, and there's jurisdiction for both – is silly. That's an area where I think there's room for improvement.

WT: We must, of course, talk about the SEC. It seems like we've probably gone an hour and forty-five minutes without getting to the crescendo to our story. I do want to ask you about one thing about NASD/FINRA, which is, there seems to be this group of people who really rotated around that axis, so to speak. There's yourself, Mary Schapiro, Rick Ketchum, Linda Fienberg, Steve Luparello, we interviewed Susan Merrill last year, Robert Marchman sometime before that.

EW: You want to add John Ramsay to your list. He's just left the Commission as the head of Trading and Markets and was at FINRA and was at the CFTC and the SEC. He's another one of these people.

WT: It's extraordinary. Could you tell me a little bit about that, just the personal interactions in that environment? Was there a sense that there was this kind of group?

EW: Yes, in the narrow sense, and yes, in the broader sense. One of the things that I liked best about working at the SEC – I went in in 1977 with a three-year commitment that I resented, and when Harvey Pitt left a year later, I told him my commitment ran with him,

not with the land, and I left sixteen years after (laughter) – is the sense of, I like collegial decision-making. I think it's much more effective. I think it's smarter. I think you come to better answers. It's much more enjoyable. I like working with people and talking with people whose opinions I respect and arguing with them.

I remember one night in particular, Marc Menchel, when he was the regulatory counsel of FINRA, and I had this big argument about whether we had the authority to bring a certain type of case that, by the way, we never would have brought as a matter of prudence. We argued about it for about an hour, and more and more people came along and joined the argument. Then, we decided we would see what would happen if we switched positions. (Laughter) It's intellectually better, it makes for sounder policy, and it's more fun. Maybe it doesn't matter if you're not a people person, but one of the best things about work, the thing that I miss about work now that I'm mostly retired, is the people. The SEC was a very collegial working atmosphere. I had that in private practice in the sense that I liked the people I worked with, but I had this one big bankruptcy case that I worked on and it was one partner and me. That's not much of a group. You go on to the next thing, and it's a different group of people.

When you work with a group of people and develop that kind of synergy – for example, Mark and I would always call Tom Selman, because Tom has – and he's another one of those people – a very different worldview than we do, a very different way of analyzing things. We'd get all fired up about some idea, and we said, "We'd better call Tom,

because if he likes it, this is a really great idea." (Laughter) "If he doesn't, nah, maybe not so much."

What happens, then, I think, is that the institution becomes stronger that way. You also have, in institutions like this, the benefit and the challenge that every decision you make has to be put into a broader context, both broader in terms of horizontally, in terms of the other issues it'll flow to; and vertically in the sense that, if you win the case that's in front of you today, but the wrong way, you're going to be in trouble five years from now. You have to think about those things. I do think that people like that. The atmosphere at FINRA is very similar and I think all for the good. When people are like that, if they don't want to go into that public policy role, I usually recommend to them they think about taking an in-house position. If you like to think that way, and you react to people that way, that's closer, I think, than being in a law firm or being at a consulting firm or even being at an accounting firm or the like.

WT: You do become an SEC Commissioner, then, in 2008. I was reading an interview with you where you had done some lobbying for yourself before that.

EW: Yes, I had.

WT: Tell me about the process of coming onto the Commission.

EW: It's very interesting because the process was so different. When I did my lobbying, which was years before when Harvey Pitt was becoming Chairman, I thought I had talked to all these people, and I had been up on the Hill, and I thought I had gained some traction, but it just didn't happen. When 2008 happened, I realized I hadn't gained any traction at all the earlier time. I had decided once I did that once that I just didn't like going out there and trying to convince people of my worth. So I figured, okay, I'm not really a political person. This is not going to happen for me.

I really owe the fact that I got there to Mary Schapiro, because one day Jack Reed called Mary and said that he wanted to play a role in choosing the next Democratic Commissioner. Traditionally it had been Chris Dodd and Chuck Schumer, and he was the head of the Securities Subcommittee and the Senate Banking Committee and he wanted to have a say. Did she know anybody who would be good? She gave him my name, knowing that this was something I'd always wanted to do. I'm a little slower than Mary. I was only twenty years behind her.

So I went to see Senator Reid. He is sensational. He restores your faith. I liked him. He liked me. He sent me on to see Chris Dodd's people. Senator Dodd was out campaigning for President, so he wasn't around. I thought I had the worst interview I'd ever had in my life with these two staff guys, and they called me the next day and said, "Okay, you're our candidate. Now we've got to convince Senator Schumer."

Senator Chuck Schumer, who, ironically, was in my husband's and my law school class, had had a candidate, a very bright woman who was a partner at a prominent law firm who was getting axed because she was too corporate and she represented corporations. It seemed kind of silly to me. He was really upset and he seemed to be under the misapprehension that I was being recommended by what he called "the unions," which was interesting because I had never in my career had a meeting with any union representatives.

So we talked for a long time, and then he said, "You were sent to me by the unions." I was about to interrupt to say, "No, I don't know any unions, so it's kind of hard for them to send me," when he said, "But you sound just like me." This little bell went off in my head and I thought, "Now's the time to get really quiet and not blow it, because it can't be any better than sounding like him. You've got to get out of here." He called me a couple days later and he said, "I'm on board."

Then I got sent on to Senator Harry Reid's office. They were satisfied, unless something was really weird about me, that if these people were all for me, that was good. Then I sat around and waited. The process of getting anointed was bizarre. (Laughter) It was so funny, because I was sure that it was going to be so much more complicated, and I was sure that maybe I hadn't come close, but at least I'd gotten into the mix the last time. Neither of those things had been true. It was interesting.

It's very interesting. They say hell is getting what you want. I spent the months before I got back to the Commission wondering: "This is my professional home. It's where I grew up. It's where my heart is. It's where I wanted to come back. If I hate this, I've wanted this my whole life, what am I going to do?" (Laughter) A lot of anxiety for nothing.

WT: Then you arrived, and it's, suffice it to say, an interesting time in the financial markets.

EW: One might say.

WT: What was that like? What came down the pipe first at you out of nowhere?

EW: It was one thing about the financial crisis after another. I arrived on July 9. Luis Aguilar and Troy Paredes arrived, I think, on the 31st of July and the 1st of August, so we had a majority new Commission. In August they nailed down my ovarian cancer diagnosis, so I had two things coming at me from both sides. I had my surgery in September. I worked from home for a while. I've had a lot of surgery in my life and that surgery is the one surgery that absolutely felled me. It was incredibly difficult to recoup from, I suppose in part because I was doing chemo right afterwards. It's a good one-two punch.

It was, "Are we going to ban short selling? Are we going to do this? Are we going to do that?" It was one emergency after another after another. The month of July was busy but pretty calm, and then it was like all hell broke loose. It was like being in a maelstrom.

Once it heated up, it died down a little once people could see that the world was going to continue to exist, but only a little. It was incredibly busy. I knew it was going to be busy. I didn't know that, no matter how many hours of the day I had, I could have always devoted more time to it.

WT: What did you make into your area of particular interest? Of course there's municipal securities again.

EW: That sort of happened. I had a big problem. My staff kept saying to me, "You have to decide what you're really interested in, because, yes, you're going to review all the enforcement cases." Although people don't believe it, the Commissioners – I don't know of any exception of somebody who doesn't review all that stuff themselves -- they don't just rely on their staffs. "You're going to have to go through all the rulemaking, but what do you really want to do a deep dive into? What do you want to try to really influence policy over?" I had a problem, because I had a pretty eclectic career. I said, well, I'm really interested in broker-dealers, and I'm really interested in the fiduciary duty idea, and I'm really interested in this, and I'm really interested in disclosure. They kept saying, "Come on, come on," and it was very, very difficult.

Then what happened to me was, a year after I got there, I was giving the Al Sommer Lecture at Fordham. I actually had agreed to do it the year before, but I was sick. I know a couple of the people who are very active in running the lecture, and they said, "Okay, we'll accept your excuse that you have cancer," (laughter) "but only if you agree to do

this next year," which was really very sweet. I had been committed this whole time. In the little glass bubble, the lecture's a big deal. You can't just get up there and give a, "Let me tell you what we're thinking about at the Commission these days," and do a little of this and a little of that. I thought, "What do I want to talk about?" I started thinking about municipal securities and the fact that I was shocked at how little had happened since I left in 1994. I thought, nobody's focusing on this area, so that's what I want to do, thinking that, if I was lucky, it would create some attention, or, combined with other things, that somebody would pay some attention because of this.

It really became a bigger deal, particularly because Chairman Schapiro decided she thought it was neglected, too, and so she asked me to work with the staff to do the study. We were originally going to have six field hearings, which got cut because of budgetary reasons, but I think that all worked out fairly well and we were kind of on a roll.

There was a fair amount of attention on the Hill, largely from the Republican side, about doing something about the disclosure issues. It was very interesting. I had one meeting with a very conservative Republican leader in the House who thought I was coming in to tell him that people should lose their tax exemption if they didn't make disclosure properly. (Laughter) I looked at him and I said, "No." I said, "I don't do tax policy. I have nothing to do with tax policy. I should not have anything to do with tax policy. That's not it at all. This is what I think: I think that there really should be some high-level disclosure standards. The Commission should have authority to set those." He looked at me like, "Oh my God, a reasonable human being walked into my office."

There was a great deal of interest from, to me, the least expected place, the Republican side of the House, and, not shockingly, from Chairman Spencer Bachus, given what was going on in Jefferson County. He had written a law review article, and our analysis ended up in the same place. But when he stepped down from the House Financial Services Committee, I really think that took a lot of wind out of our sails. People were more interested in other things.

It really worries me that no one's really taken up that standard. I know Dan Gallagher's very interested in it, and now Mike Piwowar has taken up the flag, but I don't see any place outside the SEC where there's going to be impetus for change. There is progress being made. The incremental things – mostly on the trading side, that can be done by the Commission itself or by the MSRB – there's some things being done. So that really worries me. I was interested in that.

WT: I should ask, does what you're talking about involve fundamental realignment of the relationship between the regulators and the issuers?

EW: No. No, it doesn't. What we basically were saying is, what the Tower Amendment prohibits is to have Commission pre-review of offering documents. We didn't want Commission review of offering documents, but we wanted there to be binding standards about what should go in offering documents. Yes, you could be sued if you didn't have the right stuff in there. But not a realignment of how the offering process would work.

Basically, we didn't want to write another S-K. We wanted it to be higher-level than that. We had a number of other recommendations, but that was the core one. I don't think that's a fundamental realignment at all.

Other things where I ended up spending more time were accounting, probably because I'm a math major and my dad was an accountant. Since Aulana Peters, there probably hadn't been a Commissioner who spent as much time with the Office of Chief Accountant. I loved doing that area, whether it was talking about IFRS or a variety of different issues about accounting or auditing. I would say, by the way, I think auditing is even more central than accounting. On accounting, there frequently is more than one right choice. But the question is, once you've set the standard, are people going to follow it?

I guess the final thing would be the international stuff. Mary decided that there was no way she really had time to keep up with that, so I became the international Commissioner. For a while, I was the Commission representative to both IOSCO and the Financial Stability Board. That was my last year and a half or so. Then I turned IOSCO over to the staff and spent more time on the Financial Stability Board, which was quite interesting and edifying, I think, and eye-opening, in some good ways and some not-so-good ways. I would say, in the end, those are probably the three issues, that and pushing technology, I think that's what I would identify.

WT: Of course, the main legislative focus is the Dodd-Frank legislation, but I have to assume there's rulemaking as well around these issues.

EW: Yes.

WT: I don't know what the most pertinent thing to talk about is in the time we have available.

EW: You mean the issues I just identified, or Dodd-Frank?

WT: Primarily on the issues you just identified, but you can speak more generally if you want.

EW: If you start with technology, you've got Reg SCI, which is sitting out there, and I wish it would move one way or the other. I think it's terribly important and I think it's, in a way, horribly unfortunate that there haven't been mandatory standards that rein in – look at all the problems we've had. There are going to be glitches. People make mistakes. Machines make mistakes. But not to have standards of how you put that together and how you respond is horrific, I think. That needs to move. We put out that proposal while I was Chairman. It had been in the works before that.

In the accounting area, really not. You don't see rulemaking. We spent a lot of worrying about what the Commission should or should not do about international accounting standards and working with the PCAOB as it's grown up into its adolescence, but not so much in the rulemaking area. The main area, we've already talked about, and, in general,

the global matter. In rulemaking, so much of the rulemaking has been Dodd-Frank. Then, of course, we've got money market funds and that occupied a lot of all of our time, and particularly occupied a lot of time while I was Chairman.

WT: Going back to the municipal securities, then, of course, the big issues, if we talk to people at the MSRB, are the new rules that they have to make around municipal advisors, to a certain extent, broker's brokers. From your perspective on the Commission, was that satisfactory in putting those things through, or was there quite a lot more on that?

EW: That was fine. I don't think those are the big issues in the area. I know I probably insulted everyone, both the advisory people and the broker-dealer people. They pushed back on each other. Do I agree that municipal advisors should be regulated? Of course they should be regulated. But I think the bigger issues are how the market operates, and, although it's gotten better, the bad state of disclosure that's out there – in particular, how do you get over the hump of getting to the point where financial statements are coming out into the public realm while they're still relevant? It takes them so long to get out there that what's the point of having them? That's an exaggeration, but that, to me, is a much bigger issue. That's got to be fixed, and a lot of it can be fixed fairly easily.

Because people are running these governments, they have metrics that they use. They have budgetary metrics. They have numbers. Those need to really be out there – some people do put them out; some people don't – out there in there public domain so people know how people are doing. There's a lot that actually can be done in the existing world,

even without any extra disclosure requirements, in terms of getting people to actually get things out.

I think the area where we made a considerable amount of progress was attitudinal, because, at the beginning – and this certainly was true my first round with muni matters, but it still continued to be true to a great extent – there's this notion of, okay, you've got your securities part over here and you've got your public political presence over here, and never the twain shall meet. So, if I'm telling my constituents that we've had a terrible problem, and we're not getting in the revenue we thought we were getting in, that has to do with what I'm telling my constituents. It doesn't have anything to do with the bondholders and what's out there, which is just insane, particularly because those bondholders are likely to be constituents or even the same people.

For the first year or so, maybe even longer than that, that I spent out there on the road speaking at conferences and doing all the municipal work, people kept saying, "What we really need is a safe harbor from anti-fraud liability." I finally lost it at one conference. I said, "Look, let me make this perfectly clear. That will happen over my dead body. Those two things should not be uttered" (laughter) "in the same sentence."

I think people finally understood that, yes, there's such a thing as political speech, but if you go out and talk about your financial results, to say that has nothing to do with the marketplace is a bit bonkers. I think people are finally there, but getting them to come forward voluntarily with all the things that they should come forward with, getting the

audited information out there in a timely way, is hard but it's getting better. People say it's impossible. I don't think it's impossible, but the pace of how much it's getting better needs to be upped.

WT: I spoke with Kit Taylor, of the MSRB, at some length and he was quite animated about this issue as well, and the fact that way back in 1993 he had recommended some form of voluntary disclosure through the MSRB wherein, if they met a certain externally defined gold standard, they would get a green light, and then a yellow light if they had some disclosure and then red if they had none. He was so of the opinion that this was a pretty good solution to these issues.

EW: I don't think it gets you there. I think it's very hard to say what gets you that good housekeeping seal of approval. It's something, probably, that we should take another look at.

WT: Do we want to say anything more about the reports on the municipal securities market? I suppose we've dealt with the main issues that would have come up, but in terms of the actual creation of it.

EW: I don't think so, although I still think it's a pretty good roadmap for the issues there. I guess the one other thing I'd like to reiterate is that somebody needs to really sit down and the Commission needs to take a look at the whole fixed income market. It's huge.

The American public has a lot of its money in there and it just doesn't have the same safeguards or the same transparency that you have in the equities markets.

WT: Let me ask you about being Chairman of the SEC for a fairly brief time. I'm curious as to what your strategy is going into it, knowing that you didn't want to be there in that position for that long.

EW: Firstly, I would say I didn't want to be Chairman. Mary said to me, "You have to do it for the country." I looked at her like, what? (Laughter) But I loved it. I just loved it. I loved it on the good days, and I loved it on the bad days. I'm not sorry that I wasn't willing to sign up for it for longer. My time had come, I think, to get out of Dodge.

There were a couple things about it that were very interesting to me. First of all, when I talked to the White House, I made clear to them I was not interested in being a caretaker. That's why I was so happy they decided that they were willing to make me Chairman rather than simply Acting Chairman. I said, "It is bad enough to try to get things done when people know you're not going to be around forever." We all originally thought it would probably be longer than it, in fact, was. But you stick "Acting" on the beginning of your title, and you really are dead before you start. I said, "If I take this job, I'm going to do this job every day, and I'm going to move forward with it." They were fine with that, which was good.

What shocked me was, I think probably better than any Chairman in history – given my history and the fact that I had been a Commissioner immediately before – I knew what it meant to be the Chairman of the SEC. It was still like drinking from a fire hose – not the subject matter, not the substantive stuff, but the running the agency. You appreciate that in the abstract and you know it's a big organization, and there's a lot to do, but you don't realize how much of your time that's going to eat up. I liked that part too. That was really interesting.

It was one of the things that frustrated me when, at Mary Jo's request, I stayed, because you would see things that were small management things, and if I'd been across the hall I could have fixed them. I missed that tremendously. I missed the ability to really be able to effect change and solve problems with the stroke of a pen. Not everything was that simple, obviously.

We were not in, when I became Chairman, the best shape in terms of our internal communications and internal collegiality, and so I spent a lot of time working on that as well. I think it helped to a certain extent. I think it contributed to the fact that Mary Jo was able to move money market funds when she did, so that was good. It's a wonderful job. It's a wonderful place. I think the reason I'm most glad I got to be Chairman is that it showed all the people on the staff that you can make it up the ranks. This can happen to you.

I remember the first town hall meeting I did. I spoke for like two minutes of semi-prepared remarks. Then I said, "All I want to do is take questions." Of course, I was petrified. I was sure I was going to get asked dozens of questions I had no idea about. I was going to look like an idiot. But, luckily, that didn't happen. I stood up in the front of the room in the auditorium and then I decided I was never going to be able to stand that long, so I scooched up to sit on the table, which was a little too high for me to scooch up on very easily, given my height challenges, and so I probably looked very awkward.

But I looked down at the sea of faces and I saw people who wanted to like what I was going to do, who were proud for themselves that I was standing there. I think that makes an incredible amount of difference, for people to know that we all make a contribution and that there was somebody standing in front of them who appreciated what it felt like to walk in on the first day and learn the ropes and work your way up. I think that was a good thing.

We worked a lot, too, during the period of time that I was there – and I credit John Nester with this – on our internal communications and doing a better job, which Mary Jo has kept up with, of keeping people informed. You have a tendency to assume that people know what you know, and you can't assume that.

WT: We've talked a little bit about the criticism of the SEC in recent years in the wake of the financial crisis. I don't know how much we talked about the political fractiousness of that period and what it's like working within that environment. Of course there has been

division on the SEC, among the Commissioners, 3-2 votes and that sort of thing. I'm wondering if you can comment generally on if it's frustrating, if possible.

EW: Well, of course it is. I think that's a statement of the obvious. First of all, there's nothing wrong with 3-2 votes. What can be wrong with 3-2 votes is when you go on from a 3-2 vote and people re-argue the same issues over and over again so that you get stuck. I think basically what's happened at the SEC is a result of both what's happened in Congress – and I don't know exactly when this happened, but back when I first got to the SEC, the White House picked the candidates. They picked the Democratic candidates; they picked the Republican candidates, regardless of who was in power at the White House. That is not the way it's done today. You're picked by your party in the Senate.

That's not a recipe for success. There is very little, if any, consultation with the Chairman, even if that Chairman has been picked by that White House. There's very little emphasis – and I kept trying to preach this to the White House during my time – on whether you or not you are appointing people who are not only smart and know their stuff, but who can work in a collegial body with other people who don't have the same views. You don't want five people in an independent agency who have the same views. That's not a good idea, because you're strengthened by having a variety of different viewpoints. But you do want people who understand that they're there to work in a multi-member body and that they won't always like everything that happens, but they're there to protect that agency and to move the agency forward.

I think by picking people in a partisan way, as the Congress has gotten more partisan – I'm not saying the people have gotten more partisan, but their views have gotten more extreme. That would be okay if you took the other factor into account, but many people, I think, who come on the Commission now think that they're there to further their viewpoint, which is true, but they don't necessarily give equal, or I think it should be greater, prominence to the fact that they're there to be a member of a bipartisan body and to move the mission of the agency forward. I think we've lost some of that.

That's why I look back on the Commission that I arrived with fondly. It was pretty obvious that Harold Williams was a Democrat, because he was appointed by a Democratic president. But when I looked at the others, figuring out which were which was terribly hard to do. Te

But today, you can tell and you can tell right off the bat. To me, I always thought that the highest label you could put on somebody, and I flipped this around, was either that they were a pragmatic idealist or that they were an idealistic pragmatist. You've got to be willing to move forward. You've got to understand that if things are going generally in the right direction and you get 65 percent of what you want, that's okay. Not everybody who wants to be a Commissioner these days reacts that way. That can really slow things down. That's led me to spend a lot of time, futilely, trying to think about how independent regulatory agencies could be restructured in a way that would be better, because it's not just the SEC. The others are like that too.

WT: What has been the nature of your relationship with the White House throughout your time on the Commission as Chairman?

EW: Certainly as a Commissioner, you have nothing to do with the White House, absolutely nothing. You have very little to do with the White House when you're Chairman. People seem to think that you get called by the President every day. You don't get called by anybody anytime. I had dealings, but it was all dealings about my successor. Knowing that I was there temporarily, it was: is there somebody coming soon, or is it going to be later?

WT: When you became Chairman, you were asked by the White House, that was where it came from?

EW: Yes. Yes, I believe at Mary's suggestion. If they were going to have an Acting Chairman, it most likely would have been me, because I was the senior Democratic Commissioner, although it was only by three weeks, so maybe that didn't count. I was asked by them, but the discussions we had were never about substance. They were about, how long did I have? From my point of view, I wanted them to keep sizing things for me, because I had developed a month-by-month agenda. I would have preferred, but I realized it was probably not realistic, to have developed a six-month agenda so that it was a little bit more fluid. So I tried to do that. They were trying to keep me posted about how long it was going to be. It ended up being much shorter than anybody thought it would be.

Occasionally, the times when there's communication – and it's sometimes with the Office of Legislative Affairs which is technically a part of the Chairman's office, but it's an office; sometimes they'd pass it on to substantive divisions, and sometimes with the Chairman's office – is with legislation. For example, there were communications during my tenure about Dodd-Frank and there were some about the Jobs Act, something about which the White House, I think, may have buyer's remorse. That's when it tended to happen. It's when it was really a three-branches-of-government kind of thing, not the judiciary treating the independent regulatory agency as yet a different aspect of it. It's like, what do you think about this, and how would you administer it, and can you speak out for it, or what's your position on it.

WT: I've kept you probably much longer than I initially promised.

EW: All my own fault.

WT: We did allude, a little bit, to the Dodd-Frank Act, and you mentioned earlier that there had only been so much time after the financial crisis. You thought you might have three years. You ended up not even quite getting that to get reforms in.

EW: Actually, not so much reforms. What I thought was that we would have three years to get resources, because one of the problems we had is, even prior to Dodd-Frank, we didn't

have what we needed. It was the only good thing that I could see about the financial crisis was that people would understand that we needed to be able to do more.

There are a lot of good things in Dodd-Frank. There are some not-so-good things in Dodd-Frank. Largely, they're a symptom of the fact that the legislation was pushed through very rapidly, which is not in itself a bad thing, but it means that certain things weren't banged out in the way they should have been. If you look at a very obvious example, wherever you stand on whether or not there should be disclosure of pay ratio between CEOs and employees, the provision should not have been written the way it was, because it is based on a calculation that today is only performed for five people in a company. Congress gave the Commission no flexibility to change that and in fact wrote lack of flexibility into that provision – not a good way to do it. That rulemaking presented a much greater challenge than it should have presented if the provision had been written in a less rigid way.

Some of the provisions, it's hard to tell what the legislative intent was. A lot of the things that the Commission suffered with had less to do with philosophically how you stood – although there are certain people on the Commission who think the whole act should have been taken out and drowned before it started – but because it's been very, very difficult to implement. Some of that has to do with volume, because there were so many rulemakings to do, and there are still quite a few left to do, and some of it has to do with the way the statute was written.

In some ways, it's easy for me to say sitting here, because I don't have to deal with the consequences, but you mentioned Glass-Steagall before. Reviving Glass-Steagall probably would have been at least simpler – difficult, certainly, operationally – but a simpler and cleaner way to go about solving some of these problems. I say that particularly because in my experience dealing with regulators – principally banking regulators, but banking regulators and other financial regulators other than derivatives regulators – is there is such a push post the financial crisis to eliminate risk that (and this is true globally as well as domestically) people are having trouble remembering that risk is an important part of growth and innovation.

If you simply try to indiscriminately eliminate risk, it's going to have a terrible effect on our markets and our economy. Given the fact that part of the business, the banking part in particular, which ought to be not completely risk-free but relatively risk-free still is mixed up with the area in which, if there's no risk, you have no markets, makes it difficult for people to deal with that notion now.

WT: What are the more, in your view, dangerous attempts to control risk?

EW: I would say a lot of the debates that go on internationally about what has come to be known as shadow banking. The label is a negative label, but forget about the negativity for a second and stare at that label. It says, here we've got a range of activities and, in a sense, it says, everything is either banking or measured by how much like banking it is. Why? The whole discussion starts out from the premise, basically, that things that are

kind of like banking, and "kind of like" can be pretty broad depending on what you're talking about, should be regulated like banking. I don't get that. That doesn't make any sense to me.

When you look at the definition of shadow banking in terms of credit intermediation and how it's sort of defined, even though that's a very loose term, it covers phenomenal amounts of things. Of course those things should be regulated in one way or another, says the pro-regulator, but how? Whether the goal of that regulation should be to eliminate risk is a different question. At base, the securities laws are based on the concept that you provide transparency, and people make their own decisions. If we stand the world on its head, we're going to have a completely different system. Maybe Microsoft won't be founded in a garage. What's the commercial that's on TV now? "Everything is founded in a garage." Will that happen? Probably not. You've got to watch out for that.

I think that there's too much under that umbrella. That's the principal symptom that I see. I don't even care that it's under that umbrella, but the way that it's thought about seems to presume an answer before you even start. It presumes what the conclusion ought to be. "We ought to get as close to this as possible," and I don't agree with that. Yet the voices in the room in those discussions are overwhelmingly the people who start out with that. There are some very prominent people who understand the difference, obviously, but it's a dangerous concept. I don't think people are paying enough attention to this may be too much of a good thing.

WT: You brought this up in the context of the Dodd-Frank legislation. Would you say that that – or is there another issue that you would view as particularly pressing at this moment?

EW: That has to be the issue. It's the 900-pound gorilla in the room. It's mandated legislation. I believe very firmly that, as a regulator, part of my job was to do what Congress tells me to do, whether I think it's right or wrong or smart or stupid. It's not my job to remake Congress's decisions. So it's sitting there, it hasn't been fully implemented yet. It must be the most important thing. I think what you try to do and what I philosophically tried to do in working with the other Commissioners when I was Chairman is we actually tried to set an agenda together and tried to figure out what you could move forward at the same time, because everything doesn't use the same resources.

There's not a lot else you can do, because there's so much left, but there are things you can sneak in, because you can fit it into this hole or that hole, or this is less controversial and therefore we can move it more quickly. I think there has to be a concentration on that. But then the market issues need to be dealt with and I keep praying that fixed income moves up the list. It doesn't seem to be moving up fast enough for me, but I'd like to see that be a focal point of attention.

WT: I think we've pretty much gone through quite a lot of history in our time, so unless you have anything further to add, I guess we'll wrap it up.

EW: I don't think so.

WT: Thank you very much. This has been a marvelous interview.

[End of Interview]