Securities and Exchange Commission Historical Society
Interview with Catherine McCoy
Conducted on May 11, 2005 by Michael Rogan

MR: Hello, my name is Mike Rogan. This is the interview of Catherine Collins McCoy, "Cathy," on behalf of the SEC Historical Society. Today is May 11, 2005 and we're conducting this interview in Cathy McCoy's house in Oxford, Maryland. It is approximately a quarter to one on Wednesday afternoon on May 11th. Cathy, let's start by talking about your educational background and how you came to work at the SEC.

CM: Hi Mike, thank you. I started work at the SEC in May 1975 as I completed my first year of law school at American University. I came to work as a Law Clerk in the Chief Counsel's Office in the Division of Corporation Finance and had that position for the next two years while I completed my legal education. And I think it would be safe to say that I started my SEC career on the strong recommendation of my predecessor, the person who was the Law Clerk in the Chief Counsel's Office prior to me, a dear personal friend and one whom I had a great deal of regard for, whose name was Doug Woodlock.

Doug encouraged me when I indicated that I was going to need to for economic reasons to transfer to the Night Division of the law school and seek a Law Clerk job. He encouraged me that this was the best Law Clerk job in Washington and that I should take that. And my confidence in Doug, I should say as an aside, was well placed; Doug is now a Federal District Court Judge in the 1st District and serving with distinction. So he's a very important SEC alumnus, and that's how I came to clerk there.

MR: So you were a Law Clerk in the Chief Counsel's Office while in law school and then were hired permanently once you graduated?

CM: That's correct. I was hired permanently and in fact was the envy of my law school classmates because I never went through the rigors of interviewing. I was offered a permanent job as a Branch Attorney and at that time I couldn't think of any job I'd rather have than being able to stay on in Corp Fin. So I took the position as a Branch Attorney in Branch 8 as I recall. The Branch Chief was Howard Morin and I had that position reviewing registration statements and proxy statements in 34-Act Reports for a couple of years and then had the opportunity to go to the General Counsel's Office. I worked in the General Counsel's Office in a new unit that the-then General Counsel Ralph Ferrara was establishing called the Counseling Group, and I was recruited to be a member of the Counseling Group team.

It turns out that I didn't enjoy that quite as much as my Corp Fin work, so after about a year in the Counseling Group, I returned to Corp Fin. The Counseling Group's main function was to review the Commission calendar, review memoranda from the Enforcement Division as well as the Operating Divisions, Corp Fin and Investment Management, with their rule-making recommendations and other matters that required Commission action—to review those and separately advise the Commission as to whether the Division making the recommendation was making the right recommendation or doing so for the right reasons.

MR: Who was the Chairman at that time?

CM: I think it was Harold Williams. This would have been 1978—'79. I also remember during this time, Roberta Karmel was a Commissioner and John Evans was a Commissioner whom you knew well, Mike, as one of his Law Clerks.

MR: I remember now that you mention it - there was some sense at the Commission level that the staff of some of the Divisions had perhaps too independent a view and the Counseling Group was a way to make sure that the law didn't get too creative.

CM: I think there was another view at the staff level in the Divisions. The Counseling Group was not the most welcomed development from the perspective of the staff because now, in addition to having to satisfy the Chairman and the other four Commissioners and their respective Legal Assistants about the soundness of your legal analysis, you now had to also satisfy another whole group which was the General Counsel's Office Counseling Team, and sometimes there would be warring memos.

As I recall this being the late '70s, there had been a crisis of confidence in New York City about its police department and some corruption scandals and whoever was Mayor of New York had put in a Civilian Review Board to oversee the police department and make sure that it wasn't out of hand, and restore public confidence in the New York City

Police, and one of my friends who was still in Corp Fin referred to me and the rest of the Counseling Group Team as the Civilian Review Board, which captured I think pretty well at least at the staff level of the Divisions how welcomed this added scrutiny was.

MR: I had forgotten that; so you came back to Corp Fin?

CM: When I was a Law Clerk in the Chief Counsel's Office I was actually very lucky because I had the opportunity even before graduating from law school to be involved in drafting some rules—doing rule making and drafting releases and had enjoyed that very much. So a position opened up in Corp Fin in the Office of Disclosure Policy and I decided to apply for that because frankly after a year in the Counseling Group, I decided it would be more interesting to be doing the original work myself, doing the rule making and writing the releases than just second-guessing those who had done them. I was lucky enough to get that position, and so I moved back to Corp Fin and to Disclosure Policy and then did primarily rulemaking for quite a few years.

MR: And who was the Division Director then and who was the Head of the Disclosure Policy Office?

CM: The Division Director when I started was Alan Levenson and then after he left, Dick Rowe was the Division Director. When I moved back to Corp Fin, I believe Ed Greene was then Director and Lee Spencer was the Associate Director or Deputy Director who

had responsibility for disclosure policy and John Huber had just become the Head of the Office of Disclosure Policy when I joined it. So I worked very closely with John Huber then for a number of years which was really a great privilege. He's a terrific lawyer and mentor and made the rule making process really intellectually challenging and interesting and fun.

MR: And what rules do you remember working on?

CM: We worked on the huge project of the Integrated Disclosure System which carried on work that had started in prior years under Dick Rowe's leadership. Dick had started Regulation SK and there existed Form S-16 which is the short form that incorporated '34 Act reports for '33 purposes but only for resale of restricted securities rather than fresh capital raising. Under the leadership of Ed Greene and Lee Spencer and John Huber, and Mike Connell, who was briefly at the Commission as an Associate Director for some part of that project, we put a whole team together in the Office of Disclosure Policy and proposed extensive organization of Regulation SK to put all of the substantive disclosure requirements there, rather than repeating them in the various '33 Act or '34 Act Forms, and Forms S-1, 2, and 3.

One of the most heated parts that I remember that was my directly my responsibility was the Shelf Registration rule. And I say heated because it was an interesting study in rule making history; the rule was proposed and since it was in the nature to allow Shelf

Registration for new capital raising, it was fairly revolutionary but relying on the efficient market theory and restricting it to seasoned companies with '34 Act Reports that were widely followed, it made sense intellectually and was certainly welcomed by the Issuing Committee. Since it was in the nature of deregulation, those affected by the Commission's rules just almost automatically or by reflex applauded it in the comment process.

But then late in the process, just before adoption of the rule would have been on the schedule, all of a sudden the Wall Street community seemed to wake up and realize this might not be good for us; this could affect us in ways that we don't like, and they deluged the Commission with visits, with adverse comment letters, and a huge hue and cry.

MR: What didn't they like about it?

CM: Well there was the text and the subtext—the spoken and the unspoken. They said that they were concerned that this would really jeopardize investor protection, that a prospectus without full disclosure physically present in it would be harmful to new investors and that the Commission was really just not living up to its mandate to protect investors.

The fact that most prospectuses at that point in time were never seen by the investors until they got them with the confirmation after they had made the investment decision undercut that argument, but that was an argument made nonetheless.

The staff and the Commission actually thought that part of the problem was that it was a fear of upsetting the traditional underwriter relationship with issuers which could cause issuers to essentially shop around for underwriters and lead to adverse impact on the underwriters' fees. Now to the extent that might happen that was something that the staff and the Commission thought would be a good thing.

MR: Competition?

CM: Yes. Competition is not a bad thing. Their argument was that the quality of disclosure would suffer because underwriters would come in at the last minute and issuers would be reluctant to change the disclosure in a previously issued '34 Act Report for fear that changing it might suggest an admission that it wasn't accurate before. They argued that when the underwriters come in to do a public offering historically and up to that point, the underwriters—with their counsel—through the prospectus draft line by line, challenging every bit of content, was what improved the quality of disclosure and protected investors.

To a certain extent their arguments convinced the staff that we were right—that if most of the market activity going on was secondary market activity in reliance on '34 Act Reports, a system that put the '34 Act Reports in a very much secondary role in terms of quality and where issuers and underwriters and counsel only really focused on disclosure when there was a '33-Act Registration Statement, was not a good system; it didn't help most investors and didn't help support the quality of disclosure in the market that was really needed and that attention should be shifted to the '34 Act Reports. But this was not done without a fight; hearings were held, which was my first experience running hearings on rule making and that was pretty interesting.

MR: And who was on the Commission at that time? In today's era where we have a fairly divided Commission, was the Commission divided on this?

CM: It was as a matter of fact. Barbara Thomas was on the Commission and Jim Treadway.

MR: John Evans was.

CM: I'm having a hard time remembering who was Chairman at that point. This was '82.

MR: And so who was the Commission at that time?

CM: The Chairman was John Shad, and Barbara Thomas, Jim Treadway and John Evans were Commissioners at that time.

MR: And it was a divided vote or do you remember?

CM: I remember that Barbara Thomas was opposed to the Shelf Rule and may even have written a dissent. I believe she did write a dissent. Jim Treadway ended up voting in favor as did the Chairman, and so it was probably a three to two vote with two dissents.

MR: And the Shelf Registration Rule is one that has worked great. And everyone I think would say it did everything that it needed to do.

CM: I think it did; it was a real success. I was really very privileged to be a part of rule making proceedings that did have such a dramatic impact and focus. It did what it was supposed to do in that it focused greater attention on '34 Act reports and not just on the preparation of '33 Act filings, with greater attention being focused by issuers, but also the staff's attention focused on '34 Act reports.

MR: And what other rule making initiatives do you remember from that era? Didn't you work on the Beneficial Ownership rules?

CM: I did—that was a little bit later. I got involved directly as the point person when I was Associate Director of Legal in the Division, which was a few years later. There had been a Corporate Governance Staff Report headed up by Amy Goodman and among the controversial recommendations coming out of that was one that was very important to the issuer community. They were seeking to be able to contact the beneficial owners of street-named securities because at that point issuers were having a hard time, in some cases at annual meetings, even being able to muster a quorum to elect Directors and ratify auditors. Basic corporate actions were becoming stymied because so much of the stock ownership was in street name through the brokers. Brokers were obviously highly concerned for competitive reasons about disclosing who their customers were. The Commission, headed up by Amy and then I took over this task, put together a committee with representatives from the New York Stock Exchange as the referees and the issuer side as well as the broker/dealer side. I served as the SEC observer or representative to try to come up with an approach which ended up being the NOBO, the Non-Objecting Beneficial Ownership, Rules which put together an approach that didn't upset the broker/dealer community from a competition standpoint, didn't violate customer privacy rights or concerns or expectations, but still allowed the issuers to get in touch with their non-objecting beneficial owner shareholders.

One of the big sticking points as I recall was whether affirmative consent of the customer was necessary or whether it was sufficient if they simply didn't object to receiving material directly. And then an intermediary was established so that the issuer didn't get

the addresses; the intermediary got the addresses with the broker information stripped, and it was all very elaborate, but actually kind of fun to watch—amazing in fact to see that these two sides who had been so far apart could actually get together on something that would be helpful.

MR: It's funny when you think back on—all the energy that can go into a decision like that when you're five years past the time or ten years past the time you really sometimes sit back and say did we really spend all that time coming to this conclusion. Were you in Disclosure Policy or Corp Fin when executive comp became such a big issue?

CM: Oh yes.

MR: In the '80s and '90s and remains with us today?

CM: I was; I'm not sure if I should admit that. I had some responsibility for some of the interpretive releases—not the totality of the disclosure. But as a matter of fact, I did work on a rework of that item in an effort to try to streamline the interpretive problems that it created. I'm not sure how successful that effort was because I think it's just inherently one of those disclosure requirements where compliance is never going to be all that happy.

MR: And did you work on the Q&A releases…

CM: I did.

MR: … and what is a prerequisite?

CM: I did; it's interesting that the Integrated Disclosure and Shelf Rule Releases were just much more intellectually satisfying, and therefore came to mind more promptly than executive compensation and what constituted a perk. It had to be done but it wouldn't necessarily be a highlight.

MR: What other big rule makings were you part of in your time in the '80s?

CM: After completing the Integrated Disclosure Project, that having been a multi-year effort including the Shelf Rule, since Disclosure Policy was purely a rule making office, we looked around and decided that an area that was ripe for review and, we hoped, for streamlining and simplification, was Section 16. All of the rules and interpretations thereof had grown out of control—just too difficult an area for insiders to try to comply with in good faith.

It was really a tough area; so that was a project that began while I was in Disclosure Policy and I was part of the decision to undertake that project. I must say that it was such

a huge project to undertake that it then went on for years before ever seeing the light of day in the form of proposals.

I then moved up to become Associate Director—Legal, and the other big rule making initiatives going on at that time involved EDGAR. A separate Associate Director position was created for EDGAR implementation and Amy Goodman headed that up while I was in charge of the non-EDGAR rule making through Disclosure Policy as well as the Chief Counsel's Office which involved no action letters and interpretations as well as enforcement liaison.

The Section 16 project consumed a lot of staff time, but didn't result in a proposal actually going forward during my stay at the Commission. While I was Associate Director, a lot of my time involved enforcement liaison because a lot of enforcement cases involved accounting fraud. Those either would have been cases that started in Corp Fin with a Corp Fin referral or ones that Enforcement pursued from other sources, but in any event, Corp Fin and the Chief Accountant in Corp Fin, Howard Hodges, and I would be involved to make sure that accounting policy was consistent across the Board, and that Corp Fin's view of the appropriate accounting was consistent with the Enforcement Division's view of the appropriate accounting, so that the agency was speaking with one voice or on one sheet of paper. For example, this often involved what the appropriate standards for revenue recognition, one of the favorite hot-button Cooked Books cases, would be.

At that point, when I was Associate Director, the Chief Counsel was Bill Morley, who was obviously incredibly capable and a joy to work with, both on a personal and professional level. Bill handled his duties as Chief Counsel so well that it freed me up to spend the time that was needed for Howard Hodges to try to educate this non-accountant on relevant accounting rules in each case, so that we could then make sure that we and Enforcement were sending the same message.

MR: Who was Division Director of Enforcement at that time?

CM: Gary Lynch was Director during a lot of that time that I'm speaking of.

MR: You were talking about Howard Hodges and the Chief Accountant's Office for Corp Fin. Did you have much intersection with the Chief Accountant's Office for the Commission?

CM: I did actually; I had a great deal. We called it the big Chief Accountant's Office. We in Corp Fin would refer to it that way so that we didn't get confused between Howard Hodge's and Clarence Sampson's offices. The big Chief Accountant's Office typically did not get involved in Enforcement cases; that would be Corp Fin's Chief Accountant liaisoning on that, but I got involved with the big Chief Accountant's Office very extensively in rule making. There were a lot of accounting issues associated with the various projects in the big Integrated Disclosure project.

For instance, the 10-Q revisions - we overhauled 10-Q, and that release, believe it or not, was co-authored by one of the professional accounting fellows in the big Chief Accountant's Office and me. Having a lawyer and an accountant try to draft a single document was kind of a novel thing, an interesting exercise for both of us in compromise and collegiality. But it was fun. The 10-Q is an important report and the accounting side for the unaudited financial requirements is as least half of the Report, so it had to be something that was jointly done. I was often involved with the big Chief Accountant's Office because of the years I spent doing rule making.

MR: So at this point we're in the late '80s; you're Associate Director, with responsibility for the Chief Counsel's Office, and liaison between Corp Fin and Enforcement. What came next?

CM: An opportunity came up. Jim Treadway, who had been a Commissioner, had left and gone into private practice and as I mentioned this is an era when there were an awful lot of accounting frauds. Today they might not seem as bad since we've now lived through Enron and World Com and others in the last few years, but at the time in 1986 it seemed as if there had been a lot of accounting failures and Jim was asked by the accounting professional groups to head up a private sector, blue-ribbon panel which was called the National Commission on Fraudulent Financial Reporting, but really always referred to as the Treadway Commission. It was sponsored by the AICPA, the Financial Executives

Institute and the American Accounting Association, which is the academic accounting group.

Jim was charged with setting up this Commission to study the phenomenon and come up with recommendations to help issuers, regulators, Congress—the whole group of people who are affected by or had responsibility for financial reporting and protecting investors to try to come up with recommendations to see if all this could be prevented or reduced in the future.

I was given the opportunity to go join that effort and serve as the General Counsel of to the Treadway Commission. My SEC career ended, although it was almost like a halfway house or a gradual transition to the private sector because for the next year and a half when I worked on the Treadway Commission Report I was still doing public interest work, with the interest of investor protection, the same I had done during my eleven years at the SEC.

MR: And the Treadway Commission Report is still, in the Sarbanes Oxley world we operate in today, a basic underpinning of large pieces of Sarbanes Oxley, 404, Internal Controls, a lot of that grows out of the work of the Treadway Commission. Maybe you want to talk a little bit about how that Report got developed? What was the process by which you did your work?

CM: It was a multi-pronged approach. The Commissioners—and it was a very impressive group of Commissioners I might add—besides Jim Treadway. Mil Batten who had been CEO of JC Penney and then Chairman of the New York Stock Exchange was then retired and was one Commissioner. Bill Kanaga, who had just retired as Chairman of Arthur Young, which was then one of the major accounting firms; Tom Storrs, who had just retired as Chairman of the Board of what was then NCNB—it's now Bank of America; Hugh Marsh, who had just retired from the position of Chief Internal Auditor of Alcoa Corporation; and Don Troutlein had just retired as Chairman of the Board and CEO of Bethlehem Steel, were the other Commissioners.

So the assembled group included therefore the perspective of a regulator in the form of the New York Stock Exchange and the SEC, the perspective of several different types of corporations as well as an outside auditor and an inside auditor - an impressive group who really took their work seriously.

They chartered a number of studies that were done, some internally by the Treadway Commission staff, some done in the academic world at the request of the Commission staff, and they also conducted expert interviews to essentially seek the views of the best and the brightest on this phenomenon and what could be done to shore things up. The overriding emphasis in the Report was, and the conclusion was fairly simple, that everybody involved in the process that ends up with a public company's financial

reporting - everybody involved can do their job better and how that can happen is an improved tone at the top.

The internal auditor and internal control systems were seen as an insufficiently used resource in that process and a lot of emphasis in the report went to that: internal control systems should not be an afterthought, should not be under the responsibility of the same people who produce the financial reporting. There should be a separate chain of command or reporting line directly to the Board, to the Audit Committee, to the CEO, so you don't have the fox guarding the chicken coop. Some very simple things that looked simple but in fact can make a difference. That was the overall theme there.

Some of the report's recommendations were acted upon immediately—those that were directed to the Auditing Standards Board to shore up the actual rules under which outside auditors do their work were adopted immediately. But others were never implemented—those that required legislation or tough action that is expensive like requiring every public company to have an internal control system and internal auditor. The report done by a private sector group had no teeth in and of itself, so it simply sought to persuade those to whom it was addressed.

MR: So how does it feel to have been a General Counsel for that Commission and to see in 2002, with Sarbanes Oxley being adopted, those recommendations really come into their own in a sense and actually be implemented by Congress?

CM: It's satisfying; it's also a little troubling because I think that implementing things like the Treadway Commission recommendations by legislation is not necessarily the best way to implement things. What's happened is that the expense side of the equation is out of whack and there needs to be some tinkering and it's tougher to tinker with legislation than it is with regulation. You can fine-tune rules a lot more easily than you can go back in and change legislation.

That legislation passed because the accounting frauds so shocked the national conscience that there was a moment when it could happen and that's when it happened.

MR: After the Treadway Commission Report was issued?

CM: The report was issued in 1987 and actually I should correct; I was General Counsel and Deputy Executive Director of that exercise, which was really a lot of fun. It was a very, very nice project. Since the Commission sun-setted itself and went out of business, I then began my private practice career by moving to Arnold & Porter and practiced there for the rest of my career.

MR: Well thank you very much.

CM: Thank you, Mike.