Meredith B. Cross Oral History
Interviewed by Jane Cobb, July 30, 2018

JC: I'm here with Meredith Cross. Meredith, what is your current title and affiliation?

MC: First of all, it's nice to see you. I'm a partner in the Securities Department and the Corporate Department at WilmerHale in Washington, D.C.

JC: And what are your past affiliations with the SEC?

MC: There are many. I started in private practice in Atlanta in the '80s. And then in 1990, I went to the SEC, in the Division of Corporation Finance as an attorney fellow in the Chief Counsel's Office. And that's a two- year job, so I did that for two years. And then in '92, I became deputy chief counsel for a few months and then I became chief counsel, which I did for about a year and a half or so. And then I became the associate director in charge of international and small business in CorpFin. And then a few months after that, I think it was maybe a year, I became the deputy director of CorpFin for the next four years. So, I started in '90 and I left in '98.

JC: And then you came back, right?

MC: Right. So, I left in '98 and came to Wilmer when it was Wilmer Cutler and was at the law firm from '98 until 2009 and I thought I had finished the SEC. And I thought it was probably finished with me too. But in 2009, Mary Shapiro was put in as chair in the first Obama administration. And she and I had worked together at the SEC when she was there in the '90s as a commissioner. And so, she asked me to come back and be the division director of CorpFin. And so, even though it's sort of a big deal to leave a law firm at that point in your career, and I'd already done the SEC, it was such an interesting time. It was right after the financial crisis and the problems with the Madoff issues and everything else that was going on. And working with a friend like Mary seemed great.

And Elise Walter was there who I had worked with. She was my predecessor as deputy in the '90s and I've known her forever. Our kids are friends. And David Becker, there were just so many people there who I cared a lot about. So, I decided to go back.

JC: So, your oral history, which was done in 2013, covers both stints?

MC: Yes, it does.

JC: So, tell us about what we can expect to hear about in your oral history.

MC: So, it is very long, because I did a lot of different things over the years that I was there. The first time since, as I said, I had so many different jobs. It covers a wide range of things, from rulemaking for limited partnership roll ups when I first got there, ABS rulemaking, and legislation, the lit reform, on and on. The thing that's probably the most interesting from that time period was, when I got there, there wasn't an internet, which is hard to believe. But I'm aging myself, but there I was in my mid-thirties and the internet didn't exist yet. And that came into being when I was there. And it provided tremendous opportunities for companies to raise capital, get information to investors. The SEC had seen this coming in some sense, because it created EDGAR. And so, you could see from the fact that people could get information from EDGAR once there was an internet, that this was a real wonderful source of both opportunity for companies and information for investors.

It was also a very scary opportunity for fraud and the securities laws were not written with the internet in mind at all. The '33 Act is determined to control communication around offerings. And anything that's written is especially highly regulated around offerings. And so, under pretty much any interpretation you can come up with, things on the internet are written. And we didn't have exemptive authority when this first started under the '33 Act. That came later. And so we spent a considerable amount of time trying to figure out how to fit that square peg in the round hole so that people could use the internet. Public companies or any companies could post information, but you could do it in a way that was consistent with investor protection and with the restrictions of the Securities Act, since we didn't have exemptive authority. So, that included things like how do you set up a password protected website for a private offering?

Since a private offering you can't generally solicit back then, now you can. There was no authority to allow for general solicitation, so you had to have password protection and people still use that now. And then we had to figure out, well, what do you do for a hedge fund that's always offering? Because one of the things we did was we had had a way you could allow people into RE existing websites and not have it be a general solicitation, as long as it was a new offering. Well, a hedge fund has a continuous offering. So, there were so many questions. And Commissioner Wallman really pushed us to come up with... I think he said, "I wanted an interpretive release with answering at least 50 questions." And so, we came up with... And there were more than 50 that we could answer, so we put that out.

But it's one of the things I think that we did the best, was to... all those interpretations live on now. They still work. They were flexible and I think protected investors but gave companies' opportunities to take advantage of the new forms of communication.

JC: And then what about your second stint? What issues can we find in this oral history on that?

MC: Oh, my goodness. So, my second stint, it was a tremendously challenging time. When I first got there, there were calls to close the SEC. And so, people wanted to either merge it with the CFTC or just get rid of it. People thought it didn't do its job, which was not a fair characterization at all.

JC: Because of?

MC: Because of missing Madoff and because of the financial crisis. And the fact that, for example, the toxic structures of some mortgage backed securities that blew up somehow or another weren't stopped. And people misunderstood even what the role of the SEC would be, as it relates to things like were directors doing the oversight that investors thought they should be. That's not actually an SEC thing. I mean, that's state law. So, people just were looking for someone to blame. People were so upset. And so, there was a combination when I got there of restoring confidence in the agency and then addressing immediate issues, like we did immediately. I think three weeks after I got there, we proposed the proxy disclosure enhancements, which provided a lot of information about how does the board oversee risk? How does the board assure that the compensation programs don't incentivize too much risk taking? Which was one of the thoughts of what happened with the mortgage business and those sorts of things.

Those are in that release. And then we also started looking at what to do with the mortgage backed securities and asset backed securities rules, to get better information in the hands of investors, because there was a real concern that people didn't understand what they were buying, what kind of subprime mortgages and things were in those pools. And so, I carried around between the proxy access release, which was several hundred pages long and the ABS release, which was several hundred pages long. I carried those around. Every time I got on a plane, I would read. But we got all those things proposed pretty quickly. And so, there was that. That was sort of the going in.

And then there were a variety of issues I wanted to do, which I talk about in my history, about improving the disclosure system and all these things. I thought that we would get behind us some of the key issues people were worried about, enough information about it. The board, some investors say in board members, like proxy access, get those things behind us. And then I wanted to tackle improving the disclosure system. Similar to what people are talking about now with the disclosure review that's happening now. It's always hard to get to that one when there's crises. So, I got through those, my main things that Mary and I agreed I needed to do right when I got there.

And then Dodd-Frank passed. And so, the Dodd-Frank Act had about 30 rule makings assigned to CorpFin. I got this giant whiteboard that I bought on Amazon that took up half my office, that we kept track of all the rules that I had to write under Dodd-Frank. And they ranged from taking ratings out of all of our rules, which shelf at the time was based on ratings. We had to get that out. There were a whole lot of different rules that referenced ratings. We had to do that. We had to change a whole host of different rules around ABS. I think we probably had seven or eight ABS rules to write on like that. And then it also was when the floodgates opened on using the securities laws to try to affect social change.

So, in a section at the very back of Dodd-Frank, it's called miscellaneous. And miscellaneous included Congo conflict minerals. So, tracing the origin of your supply chain, whether it came from certain mines in the Congo for the three Ts. I can't remember them anymore, but three things that start with T and then gold, tantalum, tin, tungsten and gold. Where did they come from, if they're in your products? So, I had to do that. And we had the CEO pay ratio rule, which actually is going into effect for the first time in 2018 proxy statements, is in there. And mine safety because of the Massey mine explosion. 8-Ks every time you have something happen at your mine, which includes things like 8-Ks have been filed since then.

If a coyote is seen on the site and they get cited by MSHA for that, then that's a 8-K. I am very proud of the way we did it, because we tried to be true to the statutes and practical and keep the implementation with as little friction as possible. And we wrote lots and lots and lots of rules to implement Dodd-Frank. So, as we were starting to make our way down the list and my whiteboard was looking a little less daunting, then the Jobs Act was passed. And it was effective on implementation. I mean, it was on enactment. So, it included things like confidential submissions of registration statements for merging growth company IPOs. And we didn't have a system to do that. We joked that we would go outside and just take them and bring them upstairs.

My deputy, Lona Nallengara, is going to go stand outside and you could hand them to him. But we had to come up with a way to get those submitted overnight. And we made up a bunch of frequently asked questions. No one actually asked us anything yet. But the statute had a lot of glitches and it was self-executing. It didn't require rulemaking. And so, we had to make it so that it could work. And I instructed the staff that we wanted to be pragmatic and we wanted it to work. We wanted it to be a success. And I was really proud of what we did. We made it so that people could use all of its provisions in a practical way quickly. And we got out tons of guidance really fast. And so, that all went on.

And then by the end of that, it was the end of the first administration and we had sort of run in place. We got a lot done. We were very practical. And one of the things I like to be in everything I do is... I'm not especially a partisan person and I don't want the rules to get in the way if they don't need to, but I also want them to accomplish the purpose that Congress had or the commission. So, that's what we did. And I testified in Congress nine times, which is a tremendous amount of time, and on every conceivable topic. Including one of the things that happened in Dodd-Frank assigned to the SEC. We had to hire a consultant to come in, fix our operations. And so, I had to testify in Congress about fixing SEC operations, which was quite a thing.

JC: Amazing.

MC: Yeah. So, a lot.

JC: A lot. Okay. So, Meredith, why do you think that it's important to have these oral histories and to preserve this history of SEC rule-makings and activities?

MC: I think, probably, most of all, seeing how what we did in the past still works today and how you can get the statute to work. The statutes we have are very resilient. And there's a tendency to want to... whenever anything bad happens, to adopt some crazy new reform. And I think seeing how we can get things to work, like how we got the '33 Act to work with the internet, is a good example. And people wouldn't know if that's what happened, especially if they didn't have access to these histories.

JC: Great. Well, listen, thank you so much for your time.

MC: Thank you.