Securities and Exchange Commission Historical Society
Interview with Edward Greene
Conducted on February 15, 2008 by Kenneth Durr

KD: This is an interview with Edward Greene on February 15, 2008 in New York City, conducted by Kenneth Durr. I generally start with a little bit of background. I noticed that you did Harvard Law School. Did you focus on securities law at that point?

EG: No. In fact, my first course was Professor Loss's course, which was held on a Saturday morning. That was my lowest grade in law school.

KD: You had the lowest grade with the top professor in the field.

EG: Exactly.

KD: You didn't have the sense at that point that that was something you wanted to follow?

EG: No.

KD: How did it happen that you began to focus on securities?

EG: I taught for two years after graduating from law school. I was a teaching assistant at Boston College Law School, and then I taught at Wayne State Law School in Detroit. I then went to a law firm, Wilkie Farr & Gallagher, in New York, where I became a partner.

I'd always been interested in government service. Roberta Karmel had been with Wilkie Farr & Gallagher, and had gone to Rogers & Wells. When Harold Williams came in as SEC Chairman, under the Carter administration, he was determined to bring someone in from the outside. His first selection was Fay Vincent, who had come from Caplin & Drysdale, a well-known Washington firm. He started in September 1978 as an Associate Director in the Division of Corporation Finance, with the expectation that he would become Director.

Then there was a scandal at Columbia Pictures. Fay Vincent had been the roommate of one of the Allen family at Williams College, and he was selected to become president of Columbia Pictures, from the obscure position of Associate Director of Corporation Finance. Harold Williams was still determined to go outside, because there had never been an outside Director of Corporation Finance; all the former directors had come up through the SEC. Roberta Karmel was a SEC Commissioner at the time, the first woman Commissioner. She recommended to one of my partners that I consider the position. I went down to interview, and was quite excited about it. And so, I became the deputy Director in December 1978. Dick Rowe was then the Director of the Division of Corporation Finance. I became director in March 1979.

KD: So it was understood that you would move into the Director's slot?

EG: It was understood by me, but it was not clear. Harold Williams always wanted people to, in a sense, scramble a bit. So there was no commitment as to a time, but the expectation was there. In some ways, it was very sensible, because it gave me a chance to spend three or four months to see how the Commission operated. And so, when I became the Director in March 1979, I had identified some of the key people within the SEC to join me: John Huber, who headed up rule-making; Lee Spencer, who came from Investment Management to be my deputy; and then I reached out elsewhere. But it was a lonely three months, because I was the first outsider ever brought in, and there was resistance from the traditional staff to bringing in someone from the outside, because the expectation was that, as an outsider, you wouldn't share the values of the Commission, or implement the investor protection mandate that the securities laws called for.

KD: Was there also a sense that you hadn't paid your dues by drudging through all of the things you would do in Corp Fin?

EG: Well, I hadn't paid my dues. But it was, in a sense. It's a very tight network, a very proud agency. The idea that someone would be brought in from the outside to redirect the division was something that was not necessarily an easy sell to people.

KD: Was this something that Harold Williams was doing in other areas, as well?

EG: He was determined to bring reform. As a Democrat, he wanted to make the agency and the markets more efficient and he was determined to review issues such as corporate governance. He was, in some ways, the precursor for some of the issues going on today. His big focus was corporate governance. I headed up a corporate governance report that was released, to try to focus on information given to shareholders, and what should be in the proxy statement. I think he felt that the agency had become too smug and too insular, and it wasn't adapting to market changes, and that one needed to make our markets more efficient. He wanted someone who would come in and take a fresh look, and so he was determined to go outside.

KD: Was that your sense as well, when you came in and took a look around?

EG: Oh yes. Oh, there's no doubt; he wanted to go outside, but he wanted to be sure that he'd gotten the right person. So, there was a question of waiting for three months until that happened.

KD: I guess he decided he got the right person.

EG: I think at the end, yes. When Dick Rowe left and went to Proskauer, I became the Director of Corporation Finance for two and a half years. I was then general counsel when Reagan was elected. John Shad came in as SEC Chairman.

KD: When you had that three-month period, when you were looking around, you talked about some of the people you'd identified to help you. What did you want them to help you do? What were your priorities?

EG: I wanted a team. The first day I came down to the SEC was in December. Bea Kitchen met me downstairs, brought me through security, introduced me into my office. And no one came by to say hello. I spent three months, in a sense, as an outsider, just watching how the Commission functioned, seeing how the issues were identified. When it became my time to be Director, I knew the issues I wanted to address, but also that I had to have a team that was loyal and willing to work together. I think there was sense that they were interested in joining Corporation Finance, because that, traditionally, had been the most prestigious of the divisions, though it had declined to some extent over time. I viewed my challenge to restore it to its traditional leadership role within the Commission. You know, those were the days when Stanley Sporkin was the dominant member of the staff in the Commission.

KD: Enforcement is getting all the press.

EG: Oh yes. In a sense, Enforcement had displaced the operating divisions, in terms of influence at the Commission. And the challenge was to restore Corporation Finance to the stature that it had been held in before.

KD: How were you going to do that?

EG: I think it's a question of initiatives, and persuading Stanley that you were someone who, even though from the outside, could be a public servant. He accepted that. He and I became good friends, and he was a great supporter. But there's a skepticism that someone from the outside, from the private sector, is not able to come in to implement the goals of the Commission. The irony is that that has totally been transformed, because if you look at—I was the first outsider. We've had Alan Beller, we've had John White, all of whom are more than willing to come in and implement the mandate of the Commission, because they care passionately about the public interest. There was a skepticism that outsiders simply would come in and try to be too pro-business, too pro-industry.

KD: There was a big sub-current of that at this point.

EG: Exactly.

KD: Even Roberta Karmel's position on the Commission was not entirely accepted.

EG: No, because she was very confrontational with Stanley Sporkin. There were some very tense and interesting Commission meetings where, I think, she felt the need to try to change the attitude of the divisions.

KD: Let's talk about those initiatives. You said it was really a question of the initiatives you took. What were your priorities?

EG: Our biggest goal was shelf registration, which was revolutionary. I don't know whether you know much about shelf registration, but in those days, when a registration statement would be filed, it had to be declared effective. The markets were turbulent to some extent, and we were being told that if we couldn't declare a registration statement effective within two or three or four days, then with market change, we might cost issuers twenty-five, fifty, or seventy-five basis points. So, we were trying to match the comments we might give on the registration statement versus the cost of funding that would be incurred. We also had some resource constraints within the division, because the budget for the SEC has always been challenging, to say the least. We decided to review what was an obscure set of guides to the preparation of registration statements. We came across, in one of the guides, a rule that, under some limited circumstances, permitted companies to register securities to be sold in the future, as opposed to having each issue be filed and declared effective.

KD: Which was always the way it had been done before.

EG: Always been done before. We then asked why couldn't we expand this generically, and we come up with an idea of what we called shelf registration; which would allow companies to file the registration statement, have it declared effective, and then they could take down securities when market conditions dictate, without having intervention by the staff. So we put out a revision to the guides. The feedback from the community was that this was a revolutionary change and that we had to have a more formal rule. So we put out what became Rule 415, as a formal rule, to have a debate. In the end, it was only finally adopted during the Shad administration, and there was enormous push-back from the underwriting community. While the issuer community supported it, the underwriting community was concerned that it would undermine their capacity to do due diligence. They lobbied very heavily with the Commission to not implement shelf registration. Barbara Thomas became a supporter of the industry. Shad was approached by some of the key players in the underwriting community. But in the end, the decision was to go forward. It was initially issued on a temporary basis, Rule 415(a). Then it became final. Now it has become the benchmark as to how one should regulate offerings on a global basis.

It was very contentious. The fear was that it was a significant change to the speed with which issuers could access the markets, and as a result, we were under pressure to change the liability regime as well. As you know, issuers have absolute liability, and underwriters have to show they can do due diligence; and the concern was: "Well, if this registration statement is now effective, and securities can be sold automatically, how do we have time to—if we're called in—to do adequate due diligence?" So we were under pressure to either modify the due diligence standards, or to delay, or not implement, shelf registration. We developed what's become a famous rule, 176, which were the factors that courts might take into account when assessing due diligence. But we said that: "It's up to you, underwriters, to decide whether you're comfortable going forward. We can't.

Because we make more efficient issuer access to the market, we can't relieve you of your obligation, by statute, to do adequate investigation of companies."

KD: Their concern is they're going to be stuck continually checking back on the state of the securities that have shelf registration?

EG: No, I think their concern was that it would be very competitive, and underwriters would be prepared to bid and sell these securities. You'd have no choice but to go along. Also, the thought was, at some point, that companies that did have shelf registration would appoint underwriters' counsel, who would be permanent regular underwriters' counsel, so that they would be able to say to a new firm coming in: "We have monitored the disclosure. We've been involved in the process." While issuers were prepared to appoint underwriters' counsel, they didn't allow that counsel to become involved in the preparation, the debate, with respect to some of the disclosure issues on the annual or quarterly reports. So while they were there to provide various opinions as to legality, there was a sense that they didn't necessarily have the access to the internal debates that the company was undergoing. But I think at the end, people said: "This will be risk reward."

It's a good system. At first, it was confined mostly to debt. With equity, you had to indicate the number of securities that you might otherwise want to sell. No one implemented, initially, equity shelves, because the thought was that would be too much of a signal to the market, and highlight potential dilution. As it evolved, the staff, after I left, came up with a concept of what I call a bucket of money. That bucket would be: "This is what we're going to register—let's say, fifteen billion. It could be debt, it could be equity, it could be a combination." But you didn't have to indicate the breakdown between the equity and the debt, and that made the system even more and more efficient. That has led to the new reform, which is WKSIs, which is, in a sense, a building block on the shelf system we put in place. Well-known seasoned issuers can simply file and go effective without review.

KD: That was something you hadn't foreseen when you were simply thinking about shelf registration.

EG: No, it came up in a meeting. We were under pressure to review these registration statements under unrealistic timeframes. I stepped back and said, "Well, why don't we let companies register these securities in advance? Let's have some criteria." So we developed criteria that suggested that it would be more well-known companies. The more we talked about it, the more we saw that that would be sensible. It sort of caught on. It was very contentious, because it was different. But, at the end, it was something that we stuck with, and I think it became adopted formally when Lee Spencer succeeded me as head of Corporation Finance, when I was then General Counsel. At the end, it was the right thing to do.

KD: You talk about the pressures that you were under. Clearly, the issue is that you're under-staffed for the amount of work you've got to do.

EG: Under-staffed, and that the markets were changing. There was competition, because what companies were also saying is that: "Look, we can raise capital in Europe." There was competition between the Euro debt market and the U.S. debt market, because there were issuers that were able to raise dollars equally outside the U.S. as inside the U.S. Equity, while included in the rule, was not really part of the initial success with respect to shelf registration. We had to step back and say: Well, why? That makes no sense: that you're going to go to one market versus the other, simply because of SEC staff intervention. And then it raised the whole question as to how confident were we in our comments. At the same time—and this was the other important development—what we decided to do, to implement shelf, was to make the periodic reporting—disclosure requirements—comparable to prospectuses. So we changed the 10K reporting. We changed the quarterly report. The view is that if you got the same reporting on a regular basis as you would have on an initial distribution basis, when raising securities, why not have the market rely on that? You can incorporate it by reference. So you had two key concepts: incorporation by reference and shelf registration; and then you can rely upon companies to update, if necessary, when they take down securities from the shelf. So we integrated the '34 and the '33 Acts in the ways it had been contemplated by a famous 1964 article in the *Harvard Law Review* by Milton Cohen. That process of integration had started before I came. I didn't create what we did, but I built on some building blocks that Alan Levinson, and others had started. But the idea was to integrate the Acts; make the disclosure the same; allow securities to be registered in advance. Then you'd give seasoned companies access to the market without regulatory intervention. It made raising capital much more efficient, and the savings were really quite dramatic.

KD: You're making reporting easier as well.

EG: Exactly.

KD: I've seen accounts of some kind of reorganization, where you're essentially saying: We're going to develop specialists who are going to be looking at certain types of companies.

EG: We had a wonderful man from the Harvard Business School, Collier Crum, and his associate, who came down and helped us to understand the role of our analysts, who reviewed registration statements and issued comment. When I arrived, they were assigned randomly to review registration statements. We thought it might be interesting to have sector experience and professionalism. So, after the presentation that Collier and his colleague made, he gave some interesting slides: we had to identify what industry he was talking about and what the various criteria were. We failed. It then became clear that what we ought to do is to have branches organized by specialties – airlines or industrials or commercial companies. That's what we implemented. The theory is that then you would really be seeing everyone in the sector, and you would develop an expertise that otherwise didn't exist at the time.

KD: Did it work out that way?

EG: I think so, and that's still the model going forward.

KD: At the same time, there was, I think, a sense that you simply couldn't look at every single—

EG: No. That was the whole point we started with. I gave a much-commented-on talk at one of the PLI's annual institutes in New York, where I talked about the challenge of selective review and how we might try to organize that, which was the precursor to shelf registration. I did then publish that. I've forgotten where it was published, but I was concerned that we really had to come up with some criteria, because we simply couldn't review every registration statement. It wasn't possible at all. That talk led to the debate, and then it led to the engagement on shelf registration since that was what we were saying, what we ought to focus on is new companies coming to the market—IPOs. Let seasoned companies rely upon periodic reporting. We've now updated the disclosure they make in their annual and quarterly reports, so the market's informed. If they then want to come back to the market, let them just file a shelf, incorporate the reports by reference, and go forward.

KD: You're talking about seasoned companies. On the other hand, you had one initiative for small businesses—what led to Regulation D?

EG: We needed to make the private placement regime more sound.

KD: Why?

EG: Because it was just all over the place. There was uncertainty as to the ground rules. There was the tension between the state and the federal regulation at the same time. What we tried to do with Regulation D, which was never successful, was to allow smaller offerings to be regulated entirely by states. I think that was 504, if I remember the rule. With larger offerings, the thought was that the states would defer to federal regulation, in terms of what would be the appropriate criteria for private placements going forward. We did reach out to the states. We had a dialogue with respect to them. But they never bought in. That was an idea that I had, but it never worked out.

KD: Why wouldn't they buy into that?

EG: I think because they are state regulators. In a sense, their failure to buy in is what has been the pressure toward pre-emption. If you think of what has happened, at least on some levels, more and more they have been pre-empted. They've been allowed to bring fraud suits, but they're not permitted now to review and comment on public offerings. I think the idea was that we could reach an accord between the states and the federal government as to what would be a small enough offering that it could be regulated locally, but larger offerings should be done only at the federal level. And of course, at the same time, the Commodities Futures Trading Commission was coming into place, and they had pre-emption with respect to transactions they were to regulate. That was the

model that one had in mind, but it never quite worked out. But it was a modernizing of the whole private placement structure at the time.

KD: Was the idea that if the states are going to accept that this is their purview, then the implication is they're giving something up.

EG: Exactly. They, in a sense, were prepared to accept the rules that we developed under 504, but they weren't prepared to give up oversight of what would also be subject to SEC oversight.

KD: Looking through some of the other things you were handling at this point, you had some things having to do with tender offers, proxies—

EG: Yes. At that time also, *Chiarella* was decided. We had to respond to that Supreme Court case through the tender offer rules we developed. Secondly, there was a debate between the states trying to regulate tender offers and trying to be more sympathetic to companies, and being protectionist. We wanted to be sure that we could pre-empt some of the state regulation in that area. We developed a set of tender offer rules that had to deal with both state intrusion, and at the same time *Chiarella*, with respect to insider trading.

KD: So it was a direct response in that case.

EG: Yes, it was two things. There were some state initiatives that required prior notification before you could launch a tender offer. Again, there was a very hostile environment at that point to hostile takeovers, and states were trying to protect local companies. We thought it would be more sensible to have a federal regime. So we did develop our tender offer rules. John Huber was then head of the office of rule-making, and developed those rules.

KD: How would he go about doing something like that? Where would he get the information and expertise?

EG: I think it was really public comment. We put out various proposals, and we'd get public comment. Plus, I did two things when I was director: I brought in two really quite well-known partners from existing law firms to come down as—I think you'd call today—special counsel. Chuck Nathan from Cleary and Jim Freund from Skadden. Because they were special counsel and worked less than 90 days during the year, they did not have to give up their compensation from the law firms. They came down to help me think through this whole tender offer, exchange offer, merger regime that we had. Jim Freund and I published a quite well-regarded article in *Business Lawyer* on how to regulate merger exchange offer regulation, and Chuck Nathan helped me develop the rule with respect to proration during tender offers. I think it's Rule 14d-8. That was valuable. So I reached out to the private sector, to help me understand what the best way would be to go forward in both these areas. They, I think, enjoyed the experience immensely.

KD: Again, this is probably a departure from the way the SEC had always done it.

EG: Harold [Williams] had brought in two other people to be consultants in this way, but they hadn't come in with particular areas of expertise. One was Linda Wertheimer, who was very good, who was brought in as special counsel by Harold Williams. The other was a partner from Cadwalader. There was another person who consulted, [Irv] Einhorn, who had been famous for his book on proxy regulation. They had sort of been on the periphery, but they didn't necessarily have the insight as to how the market was changing dramatically with the rise of tender offers. I wanted to get people who were much more engaged in contemporary practice; both were extremely helpful.

KD: Were you able to get these new rules in place at the beginning of the curve of the activity in tender offers?

EG: No, it was more at the end. It takes time. A lot of it is just to understand what's going on. Rulemaking is not fast at the SEC. But I think we got quite a bit of support from the private community, because we weren't particularly radical in our approach.

KD: Sounds like the only place you didn't was from the underwriters, in shelf regulation.

EG: No. At the end there was a huge lobbying effort, because of their concern that this would undermine their capacity to do due diligence. It was the competitive aspect, because the idea would be that if you had securities registered, anyone could come off the street and bid to take them down, where before the thought was you had relationships with your clients, and they would look to you first were there any type of new fundraising going forward. I think it was the competitive aspect plus the liability concerns that led them to think: Well, why do we need to put this in place? On the other hand, the companies were quite keen to support this, because for them, it would be a much more efficient way of raising money.

KD: That gets to something we touched on a little bit before, which was what the Commission is like at this point. Barbara Thomas was definitely somebody who was pretty concerned about shelf registration.

EG: She was. She was pro-underwriter. I think she wanted to take a stand as to where she was, and she was the one that dissented with respect to shelf registration. I had put it in place. It was implemented on a trial basis, and then I became General Counsel, so it was up to Lee Spencer to take it to the final step. That's where Barbara became much more prominent in opposing it. I think she had been lobbied by the various underwriters, and decided that she didn't think it was in the best interest of the investor community.

KD: Had Williams been able to really direct the Commission during his tenure? Did you get a feeling that he was a pretty strong Chairman?

EG: Very strong. Strong and effective, because he also was able to delegate to division directors to come up with their game plan going forward, and he was very supportive. He didn't focus very much on these kinds of reforms in corporation finance, where they were

fairly technical. His focus was primarily on corporate governance. But he was willing to trust me as the division director. When we made these proposals, he backed it, without significant involvement, other than being informed. That was a very strong Commission, because we had Phil Loomis, Steve Friedman, John Evans and Irv Pollack. They were very knowledgeable about markets, and were able to understand the structure of the proposals we made.

KD: So the people working on the staff weren't wondering where the Commission was going to come down on things, it was always clear?

EG: No. Because Harold was quite clear that he supported it, and was encouraging it. There were two things going on. First of all, shelf registration had the support of the issuer community. Second, if you think of it, the Democrats were always seen as sort of anti-business, and Carter was coming in on reform: We can be sensitive to political needs, we can be efficient, but at the same time, we can represent our traditional constituencies. I think they were trying to show that they were as able as the Republicans to make markets efficient. Harold felt strongly about that.

KD: Some of what the Carter administration was doing was with de-regulation.

EG: Exactly.

KD: You're stepping into that old charge that the SEC is favoring the industry rather than the widows and orphans.

EG: No. But in some ways though, this was also re-regulation. If you step back, what we did was to increase dramatically the disclosure requirements on a periodic basis by companies. There was trade-off. You will get efficiency, but you've got to be much more transparent and have much better disclosure to the market. It wasn't just giving up regulatory oversight, because you paid a price. Issuers were prepared to pay the price because shelf registration really provided efficiency. But if you think of it, the 10Ks and the Qs at that time were very, very modest, and they didn't bear any correlation to what was included in a full-blown prospectus. What we did was change that. They're the same. We took what Milton Cohen, who wrote that famous '64 article, said and we actually implemented that. We developed the MD&A with respect to both the prospectus and the 10K. We increased the requirements for quarterly reporting. And we said: Now the market's going to be totally informed, so there's no need to reiterate this disclosure, you can incorporate it by reference. Secondly, we're comfortable having the staff declare an issuer's registration statement effective with respect to securities based on a review of what issuers have already told to the market. We'll rely upon issuers to update that disclosure when there are shelf take-downs.

KD: The MD&A was part of this package.

EG: Absolutely. We implemented MD&A.

KD: You referred to the idea of bringing together—and this is Cohen's article—the '33 and '34 Acts, and enforcing them both at once. Can you lay that out a little more clearly for me?

EG: What he said was that, if you had enacted the Acts in reverse order, and if you had the '34 Act adopted, where if you list securities on an exchange you have to have them registered, and provide various disclosure, that you would build on that disclosure when you sold securities going forward. There would be no need to repeat that disclosure, because it had already been in the market. The '33 Act required you always to repeat the disclosure, put it together, and then give it, even though the market might otherwise have known it. There had been an initiative before I came called Form S-16, which was a very special form, in which for the first time, incorporation by reference was permitted—the idea that if the market's already been told, there's no need to reiterate it, you can just tell people where to get it. We built on that with shelf registration, by saying: look, we can tell you where it is. You can get it if you want. What we'll do is to have companies update with new developments. The prospectus technically has to address all these disclosure issues; the genius of what the staff did was to say that: "Well, we'll just let issuers incorporate that information from previously-filed periodic reports. They don't have to print it." That was before Internet and before the Web, and the idea was that people would be able to get it in hard copy from the SEC or the issuer. Now, of course, it makes the most sense, because companies have Websites, and it's fairly easy to go forward. That's where the markets are going more and more. There's simply no need to repeat information that's already been disclosed.

KD: You're saving paper, at least.

EG: Saving paper, but it was also a way of making the system more efficient, and saving costs for companies, because they didn't have to print these bulky prospectuses, because they could simply say: We incorporated our 10K, and this is where you can get it.

KD: You talked about Williams and his Commission. Ronald Reagan came in, and you had John Shad. What was your impression of him when you first met him? And your sense of what he wanted to do with the Commission?

EG: Very funny. Shad presided over the final adoption of shelf. He made a fairly derogatory comment about: This is a telephone book of rules. Because it was quite complicated to go through and implement it, technically, which is always the case with the U.S. regulatory structure. But he supported it. He was under enormous pressure and he stood by and deferred. He was more interested in stringent enforcement. He said he was going to come down on insider trading with hobnail boots. Do you remember? That was a famous quote. Under his regime, he developed the first memorandum of understanding. John Fedders and I went off to Switzerland to negotiate that MOU, following allegations of insider trading in connection with the takeover of Santa Fe Industries. He supported that quite well. I was General Counsel starting in January '81 and left in November '82, so I was probably a year and a half with the General Counsel's Office. There's two things that were quite memorable in that. One was to negotiate the first MOU with the

Swiss with John Fedders. Secondly, I gave what became a fairly famous speech at the New York Bar Association with respect to whether the SEC should discipline lawyers under SEC Rule 2e. There had been a very contentious proceeding against two lawyers by the SEC that raised the question as to whether the Commission should regulate the ethical behavior of lawyers, when there's been no finding of wrongdoing by them, and/or their clients.

KD: Do you remember what the cases were?

EG: I don't remember. But there was a famous Commission proceeding where they decided not to take action against the lawyers involved. But it was unbelievably contentious between the SEC and the bar. I will never forget that, because I went up to New York in a snowstorm, and that was the night that an Air Florida plane crashed in the Potomac, killing everyone aboard. I gave the speech at the City Bar Association, and it was then published. It's been referred to quite frequently in the context of Sarbanes-Oxley, which now has changed the way the Commission can regulate lawyers, because it's been given explicit legislative authority to do that. But I was trying to put to ease some of the tension that existed between the bar and the SEC, and it seemed to be accepted on both sides.

KD: How did your perspective change when you moved from Corporation Finance into the General Counsel's Office? Did you see things that you hadn't really realized were happening at the Commission before? Was there anything new?

EG: No. My life's been characterized by change: Head of Corp Fin, General Counsel, Cleary, Japan, London, and now here. It was just something different. I also realized that I was not a litigator. I had a chance to argue a case in the Supreme Court, and I realized I wasn't up to it. It was *Chiarella*. The Solicitor General didn't support the Commission in that case. We were allowed to argue it ourselves, because if the Solicitor General will accept the position of the Commission, it will make the argument. I realized that this was a very important case and that I had absolutely no experience. So I allowed Paul Gonson, who was Solicitor at the time, to argue. I was rueful about that, because that would have been my only time to be before the Supreme Court. But I was affected by the fact that I didn't think I should argue one case.

There was an appeal to the Court of Appeals in Virginia—I've forgotten the circuit—maybe the Fourth Circuit. It was a broker/dealer case. I had never argued other than in moot court in law school, and so Jake Stillman and Paul Gonson prepared me for this case, and I approached the bar. The court said, "Why is the SEC intervening in this case? It's absolutely routine." All I got to say was my name, rank and serial number; I never had a chance to argue the case.

KD: All that preparation.

EG: It was hours and hours of preparation. I never had a chance to really make an argument, because they had decided that it was a pretty routine case, and that there was no need to

have the SEC involved as amicus, because it was a state case. It was the State of Virginia versus some broker/dealer. We were coming in as amicus. They said, "You don't need to be here. Thank you very much."

KD: But technically, I guess, you were arguing before the Supreme Court?

EG: This was before the Court of Appeals. *Chiarella* was the Supreme Court. That I could have argued. But at that point, it was fairly clear that I was not going to be with the agency that much longer. I thought it would be inappropriate, with lack of experience, with expectation of departure, to argue a major case. So I gave it to someone who had been with the agency for a long time, and was a very gifted lawyer.

KD: Yes, and he did a great job with that one.

EG: Yes, he did. He didn't win, but he did a great job.

KD: Did John Shad have a vision for what the General Counsel would be doing?

EG: No. John Shad spent most of his time working on speeches, that wherever you started from came out to be the same speech. "We'll be tough on fraud." He trusted his people. In some ways, he was a wonderful manager, because if he had confidence in you, as the General Counsel, or head of the Corporation Finance Division, he let you do what you thought was the right thing. He was also persuaded that all of us understood the agency's mission, and would basically fulfill that. We had disagreements. He was probably more deregulatory than some of us would like. But if you think of it—I was a Democrat. The person he appointed to replace me as head of Corporation Finance was a Democrat. He brought in John Fedders from the outside to head up Enforcement. But he kept on the head of Market Regulation and Investment Management. He accepted the professionalism, because if there is something that really is quite magical about the agency, it is that your political orientation is irrelevant. Most people in those jobs want to do what they think is the best interest for the markets and investors. So I think the political affiliation of the division directors is totally irrelevant. And he didn't fire any.

KD: There's no Democratic or Republican way to commit fraud?

EG: Yes, exactly. Especially today, most of the division directors are appointed on the basis of merit, and their political affiliation is irrelevant.

KD: How soon was it after you stepped in that you started to get involved in insider trading and the Swiss cases?

EG: It happened right away. The assets were frozen in connection with the Santa Fe case, and there was a protest from, I think, the Swiss government. The U.S. ambassador stepped in, and said, "We've got to work out a way other than simply having assets frozen, and fingers pointed." There was a meeting in Bern, where we tried to come up with a framework that was focused mostly on tender offers, because that's where the trading

was alleged to have taken place. We had two meetings, one in Bern, and then, because it was so sensitive, we went up to Montreal, where we got together to make final this MOU. It was fascinating, because the Swiss had very strict rules with respect to bank secrecy. The innovative way forward was that the bank supervisory agency said that what they would do is to reach out and say that clients that had bank accounts would be required to consent to providing certain information within defined parameters, if there was a request from the SEC. So you didn't undermine bank secrecy, you predicated cooperation upon consent; but you built in fairly strict parameters, so that if the request came in, it was with respect to what would be a fairly serious investigation. We now have forty or forty-five MOUs around the world. It's become the framework. That and shelf registration are what I'm the most proud of in what we accomplished at the agency.

KD: How did that develop? You know you've got a problem. You know it involves the Swiss. I assume that you were working with John Fedders on this?

EG: We talked with Shad, and there was a sense that this was creating tension between governments. Our ambassador in Switzerland said, "You've got to step down and try to work out an accommodation." And our key was—step back, this is fairly technical. There was a dual criminality treaty in place at that time between Switzerland and the U.S. So that if it's a crime in both Switzerland and in the United States, the information could have been shared, and extradiction could have happened. The difficulty was that insider trading wasn't a crime in Switzerland. Therefore, that treaty was not available. So we had to come up with a solution, since there was not dual criminality, how we could work sharing of information from one market to the other. There was pressure to somehow avoid this public confrontation of assets being frozen, where it wasn't necessarily a crime where the trade originated, but it was a crime in the country in which the trade was executed.

We went off and met with Jean Zwahlen, who was the person assigned to us—unbelievably sophisticated person. We spent two or three days in Bern talking through the approach, and we finalized it in Montreal. But we came up with the idea that we wouldn't assault bank secrecy. We'd have to come up with a way that would be satisfactory to the Swiss, and it came out on the idea of consent. It was a quite clever way of saying that the Swiss Banking Association would go back to the banks and clients and say that: If you want to maintain your account, you're going to have to consent that under these certain circumstances we may provide information—which will be filtered. It was always going to be filtered in Switzerland before it was passed over, so there would be some oversight to it.

KD: What was the motivation for Zwahlen and the Swiss to give on this? Why did they want to work with you?

EG: Because it was embarrassing to the Swiss: the idea that the Swiss would basically have some people who would engage in illegal conduct. They didn't need it. They didn't want that either. In a sense, that country has had lots of people who are not necessarily Swiss who use Swiss accounts to engage in varieties of activity. I think they felt this

would give them credibility, because they would be seen to be responsive to these types of high visibility transactions, where the conduct was not acceptable.

KD: How did you and Fedders divide up the labor in doing this work?

EG: I don't know. We went together. John was head of Enforcement, and I was the General Counsel. Ted Levine, who was at that point in Enforcement, was also a critical player in this. The three of us worked together as a team, trying to devise what the framework would be, how we would conduct the discussions. I think the idea was the General Counsel was the advisor to the Commission; John was enforcement, because these cases were Enforcement-related cases. Ted was in Enforcement, and was really quite creative in helping us come up with a framework that we could present to the Swiss.

KD: The thing we call the MOU. Is that a description essentially of this arrangement?

EG: The memorandum of understanding was the first memorandum of understanding between the SEC and any other regulator outside the U.S.

KD: Did you have a sense that this would set precedent?

EG: In fairness: probably no. Looking back, I'd love to say yes. But it has become the way forward, through IOSCO and others. This is what agencies have recognized. But it was really quite unusual.

KD: Was there an Office of International Affairs in the SEC at this point?

EG: I think Mike Mann was head of it at the time. They had some input. But they did not carry the laboring oar on this. It was John, myself, and Ted Levine—I think Mike was there as a young lawyer, and provided some insight. But I think Shad wanted to have his division heads, and his General Counsel to do the negotiation.

KD: I think I've seen Michael Mann's name in there somewhere.

EG: Yes, he was. I think he clearly was there at the time. I didn't have any connection with that office at all. But when this came up, I think he did help brief us, and gave us some very valuable insight. But I don't remember his being part of the negotiating team.

KD: It would seem that the SEC was very new to matters international.

EG: Indeed, it was. I had never before in my life negotiated with anyone from a foreign government. So it was fascinating.

KD: Were there any other initiatives that really occupied your time as General Counsel that we should talk about?

EG: I think it was the speech I gave on Rule 2e, and the Swiss MOU, that were the issues that most occupied my time. Also, at that point, Harold Williams had, through Ralph Ferrara, put in place the concept that the General Counsel really needed to oversee division initiatives, to be sure that the Commission received a balanced view as to the division's recommendation. Because the concern that Harold had had was that division directors might cut deals, and wouldn't necessarily present the full panoply of arguments back and forth. Harold Williams's famous quote was he wanted to see what was on the floor—what had been discarded, as opposed to what had been agreed coming forward. We continued that tradition as well, where the idea would be that we would try to be the independent voice to the Commission, as our client; which I do think is a sensible approach. That's continued, I think, since the day of Ralph Ferrara.

KD: The General Counsel is the one who's going to see what was left on the floor.

EG: Exactly. That's the idea. And to try to find out. And also try to promote the argument, but not having a vested interest, because inevitably, division directors and their staff will have a vested interest in an outcome of a rule proposal. The question is how to ensure a full debate, and that often happens if another division raises issues. It used to be through perhaps Enforcement or other divisions that the Commission could rely on questions being raised. But, I think the thought that Harold had was that it made more sense to have it done through the General Counsel's Office. He really beefed up that function with Ralph Ferrara. Ralph did have a view. I thought it was a very sensible approach, because it means that there was arguments to be put on the table, to be sure that the Commission understood that there was controversy, because many of these proposals were, in fact, controversial.

KD: But then, at that point, is it the General Counsel working with Harold Williams who is deciding what's going to get left on the floor then?

EG: I think Harold just wanted to know, and be briefed as to what were some of the options, and to be sure he understood the options, in case it wasn't necessarily presented by the division directors.

KD: What about the argument that this is creating bottlenecks? That this is essentially slowing or limiting access to the Commission by the staff?

EG: There's an aspect of that. There's no doubt about it. It's hard to know what the best thing is. Clearly, there's an aspect of a bottleneck, no doubt. On the other hand, if one were a Commissioner, I suspect that you'd want to be sure that you understood all the arguments, because given the calendar that they have—and some of these issues are very technical—they may not necessarily be as sensitive as they would otherwise like to be. So, it's a fair point.

KD: I know that it was made a good bit, probably when Ferrara was in there, right?

EG: Yes, it was.

KD: Anything we haven't talked about as far as the MOU, the Swiss case. We're particularly interested at this point in the SEC's developing role in the international sphere. And you said you weren't really looking at setting any precedent here; you just simply were dealing with the Santa Fe case?

EG: Well, because at that point, the SEC wasn't particularly international. I mean, our markets were the dominant markets globally. We used our law extra-territorially, as we did when we froze those assets in the Santa Fe case. That annoyed a lot of foreign governments, and that led to the discussions. The only international issue that we had was, early on, when I was in Corporation Finance, we revised the requirements of Form 20-F, which have to be filed by foreign private issuers. We increased the level of disclosure, and the reconciliation requirements, which annoyed the Japanese no end. And the Japanese, for some period of time, ceased to come to the U.S. market on a public basis, because they took the view that these were the rules when we came in, you're now changing the rules after the fact, and you're now trying to impose them on us. We did make some concessions in the 20-F we adopted. It was quite technical. But that was probably the only international focus that I had, both when I was in Corporation Finance and then General Counsel, other than the MOU.

KD: This is creating a problem, in a sense. You're actually dealing with increased level of disclosure rather than reducing disclosure.

EG: This is increased level of disclosure. If it was decreased, the Japanese would have applauded. Increased, they would be upset about. But it was quite contentious when we adopted the revised 20-F.

KD: Do you remember why that took place?

EG: I think it was because we were focusing on the idea that '34 Act reporting should be equivalent to the '33 Act reporting. If we were going to change the 10K for domestic issuers, shouldn't we change it with respect to foreign issuers? We would give them a less strict regime, and we made certain concessions to the foreign private issuers, but we thought we should increase the reporting to the market, because that was the whole premise of our integrated disclosure system.

KD: What was behind your decision to leave the Commission in '82?

EG: I think probably two things. One is that it's unbelievably demanding for four years. Secondly, my first daughter was born. From an economic perspective, the pay of a General Counsel or division director wasn't particularly remunerative. Also, I was probably more regulatory in my approach than the then-Commission, with Shad as the Chairman. I thought four years was enough, because it was an unbelievably intense four years—which I loved. I wouldn't regret it. I have no regrets at all, and I loved every

minute of it. But at some point, you need to change. I was approached by Cleary to join them in Washington, which I did in November '82.

KD: What kind of specialty did you take up when you went with Cleary?

EG: I was probably just a securities lawyer. The irony was that I joined Cleary in '82, and developed a fairly effective domestic practice. Then in '87, Cleary asked me to go and open a new Tokyo office. I became the first licensed American lawyer in the new regime in Japan. I asked why they were asking me to go to Tokyo, because I had a pretty vibrant domestic practice, and most of my competitors said it was silly of Cleary to send me. But they were committed to Japan, and there were two criteria for the first licensed lawyer to go: either a very old senior partner, because age is respected in Japan—no one was willing to go at that age—or a former government official. I was the most recent former government official to join. So we decided to pack up my girls, who were three and six at the time, and went off to Tokyo. We spent three years there. And then, from Tokyo we went to London, and spent fourteen years in London, and then came back to New York. That really led to what has been the joy of my career, the international aspect, because I got to the U.K. at the height of the privatization movement both in the U.K. and in Europe, and was involved in some of the really groundbreaking transactions that took place between Europe and the United States.

KD: Before we get to that, let's touch a little bit on Japan. Were you involved in Japanese investors trying to get into U.S. markets, and vice versa?

EG: Yes, we were working with Japanese companies who were trying to raise money in the United States, or who were doing business in the United States. I got there in April of 1987. If you remember, October '87 had the worst market collapse since the Depression, and that affected the cross border activity. But no, we were trying to build up the capital markets practice; that was my focus. But I didn't spend all my time in Japan. In fact, in the first two years there, I probably spent six months outside of Japan, traveling. I was involved in the first flotation ever of a Hong Kong company on the New York Stock Exchange, Hong Kong Telecom. What was fascinating about that was that was just at the time that Mrs. Thatcher announced the turnover of Hong Kong to China. So we had these extraordinarily difficult disclosure issues as to whether U.S. investors should accept Chinese assurances that they would continue the regime in Hong Kong. I think it was the most interesting transaction that I'd worked on for some time, because we had some very delicate disclosure issues, because China was going to wind up controlling Hong Kong in 1999. This flotation took place in 1987. The Hong Kong government, which owned some shares in Hong Kong Telecom and was a seller, simply wasn't going to be happy with having a U.S. prospectus having risk factors saying you can't trust the Chinese government to live up to its commitments to Hong Kong. Because that was the issue.

KD: So you were trying to find some other way to say that?

EG: We worked on it with the SEC, and we assumed that the market would be able to make its own conclusions with respect to that. So we didn't have to make it as explicit as

probably some would have liked. But that was the issue. That was the biggest issue. It was a very good company, and it was a very successful offer.

KD: I take it this was not a company that thought that the disclosure requirements were too burdensome?

EG: No, in fact it was owned by Cable & Wireless, who controlled it, and they wanted to be able to raise capital; they wanted to float it. They had international ambitions, and at that point, the only international market was really, in effect, the U.S. It gave it a cachet and a credibility for a New York Stock Exchange listing, which many of the initial listings had. There were two reasons to list in the U.S. One was the cachet. Secondly, a lot of these privatizations, they wanted to have a backstop with respect to U.S. demand, in case it couldn't be sold locally in sufficient numbers. So, that was the first of the privatizations, or first of the listings that I did. I did a lot of the privatizations when I was in Europe: Deutsche Telecom, IMI, the first Italian bank that was listed, the second tranche of British Telecom, and several others.

KD: There was a little bit of movement from the SEC at this point. There was a big study in '87; there were some new rules that were coming out. How closely did you pay attention to those things?

EG: I was involved pretty much. I think once you are part of the network, you're engaged in most of what the SEC does. I've always been an active participant in programs talking about SEC initiatives. I was at one point a co-chair of the Annual Institute in New York. So, I stayed pretty closely in touch with these, and commented quite regularly on their proposals.

KD: Things like Regulation S—

EG: Yes, exactly.

KD: 144A. How did those make it possible for you to do what it was you were doing for your clients?

EG: Reg S simply brought clarity, because there was uncertainty. There was a coalition I started together with others, I guess about twenty—after I left the SEC, and probably just before I went to Tokyo. An ad hoc group was put together of law firms that met regularly to talk about issues. The first issue we focused on was Reg S, because we wanted to have some clarity, because there was simply uncertainty about cross border investing. Linda Quinn was then the Director of Corporation Finance. After Reg S, she came up with the idea of 144A, which was probably, after shelf, one of the most revolutionary ideas and proposals that has happened, because, in effect, it's created a public market for institutional investors. It works brilliantly. It also means that companies don't have to register in the U.S., because they've got total access to the institutional market. So we worked with her on both the Reg S proposal, and then the 144A. We were always involved in an ongoing discussion with the SEC, as to what they

might consider. Linda, when she was the director, was probably the most international minded of all the directors since I left, and even subsequently. She was also at the height of the privatization movement, and we needed lots of imaginative solutions from the SEC, which we got in a variety of ways, too technical to go into. But she and Elisse Walter, who was her deputy, were very, very creative in working, and recognizing that if they were flexible, then we would be able to give U.S. investors access in the U.S. market, with U.S. protections, to foreign securities.

KD: Now you talked about you and other counterparts at law firms working with the SEC. Was this the formal sort of response—putting out letters for comment?

EG: It was both informal contact through programs—because Linda had worked with me when I had been at the SEC, and then we put in formal comment letters to support what the agency was doing. One of the great strengths of the SEC is that the network remains not only very strong, but people are committed to its mission. Even though they go through the revolving door, they're not going to come back and hammer it, and say it's all wrong. Those in the network generally support what they perceive to be in the public interest. I believe that strongly. Most of us who have been in key positions in the agency won't associate ourselves with recommendations we don't think are sensible for the markets or for investor protection. Again, because of the network, you can try to build consensus. You can have informal consultation; you get feedback. So when you come out with something, it's perceived to be thoughtful, as opposed to being off the wall. What you want is credibility. You don't want to have this firestorm of criticism that distracts you from where you want to go. You want to come up with something that's centrist, and has a real likelihood of being adopted.

KD: That kind of network you describe was clearly very present in the U.S. Former SEC people are everywhere in the American securities market. How about overseas? Were there any people in your position?

EG: I was the first person ever to go overseas who had been formerly with the SEC. That, I think, did help my practice develop enormously. I put together a network of people who were overseas as well, to interact with the SEC, going forward.

KD: These were just people that you knew, not necessarily folks who'd been in the SEC?

EG: Yes. That's right. People from law firms.

KD: So, one would assume that the SEC was very interested in what you had to say about things, given these connections.

EG: I think it was, because that's when the markets were becoming more international. I had worked with many of these people. I support fervently the mission of the agency. I don't want to seem immodest, but I think people felt that I had a certain credibility with respect to some of the proposals that I would put forward. We came up with some fairly creative approaches too.

KD: Such as?

EG: When Deutsche Telecom was going to become a publicly held company in the U.S., we got a no-action letter that allowed research generically to be distributed. Usually with the U.S., when you have an IPO, you can't distribute research in advance. We developed a concept in connection with Wellcome Trust, which at that point did the largest equity offering ever in Europe—an approach which became known famously as the Pink Herring, where we didn't have to indicate the number of securities we were actually going to sell until we got expressions of interest. So we registered a nominal amount of equity securities. There were some other innovations that we developed. With one of the BP offerings, we came up with the first ever integrated prospectus, so the same prospectus was used in Europe as the U.S., with one exception: there was a very small, technical U.S. prospectus attached at the end, which simply incorporated everything by reference; it had no substantive information. But that was something that we worked through with Linda [Quinn] and Elisse Walter. The idea was that you wanted to have a global syndicate, a global prospectus, and a global offering. The staff was very accommodating. We came up with some quite clever approaches in the context of international environment and international offerings.

KD: The instance that you talked about, in which you were able to come up with something that more or less overlapped—it's a foreign offer?

EG: It was a global offering. We wanted to have one prospectus that looked the same in the U.S. as it did in Europe. Though the requirements were different, by using shelf registration and incorporation by reference, we were able to come up with a fairly clever way of going forward. The staff was cooperative, because Linda recognized that these markets needed to be integrated, and the SEC needed to be flexible. She was really one of the most accomplished of the division directors we've had in the history of the Commission.

KD: Given all that, my impression is that ultimately it hasn't worked out that well. For example, you had to come up with some sort of clever solution to getting this kind of global compatibility, and that wasn't otherwise achievable, as things went forward. Is that correct?

EG: Well, no. I think what happened—it was achievable. You created an alchemy and some creativity. The difficulty is that after she left, I think the emphasis shifted away. One of the criticisms that I have currently of the SEC is that they're not taking the lead internationally, where the goal must be—at least from my perspective now that I'm in a different job, to have a seamless European/U.S. market. There are ways to achieve that. The SEC has tried to show some leadership. Cox has made the right statements, but given the absence of two Democrat Commissioners now, there has been a lag in initiatives going forward. The EU/U.S. dialogue, while going forward, is not as robust as one would like, and not as engaged as one would hope, and the timetable is not as robust as one would desire.

KD: Is the SEC just too stuck in the idea of protecting U.S. investors, with the standards of U.S. securities laws?

EG: I think they are. The U.S. Congress is unbelievably naïve, unbelievably unaware of what's happening globally in markets, and therefore will react negatively against anything that suggests that our system isn't the best in the world. They're perfectly happy to have internationalization, as long as other countries copy what we do. That's the real problem. Barney Frank aside. Barney Frank is quite thoughtful. I think if there is a Democratic president, there's probably some possibility going forward. I think the tension today is that there's no Democrat Commissioners. With the election, I think people are cautious about going forward.

KD: You talked earlier about that point at which there really was no international market. Now that's quite the reverse, and you're saying that the American system might not be the best.

EG: Well, it's not the only choice. I mean, before it was assumed to be the market of choice. Now, there are unbelievable liquid markets elsewhere. In Brazil, two years ago, there was a four billion IPO that was done entirely in Brazil—didn't have to list in the U.S. at all. We've got higher economic growth rates outside the United States. We've got markets that have become more transparent, more liquid. They're not in a race to the bottom, but they've really adopted standards that are comparable to the U.S. If you're a Chinese company or a Russian company, why would you want to come to the U.S.? If you're a Russian company, why would you come to the U.S. if your CFO might have his visa revoked if he tries to come in? What happens is that companies would really much prefer to trade in their home countries. That's where most of the liquidity is. If you think of what the genius of the 144A market is, you can have active trading in your home market; you have institutional access in the U.S. Those people have securities that are totally liquid, that can be sold back in the home market. So you can raise capital globally in the private market. You don't have to go through the SEC registration. The SEC has not developed mutual recognition, trying to accept the approaches that local markets may have. The reality is, no European issue is going to come and raise money publicly in the U.S. In fact, they're de-registering. The number of European issuers that have de-registered is quite high. They don't want to have the exposure to litigation, the ongoing reporting requirements. They don't need it.

KD: Given your perspective, if there was a tipping point, when would it have been?

EG: I think it was probably Sarbanes-Oxley. At that point, the EU was implementing its financial services action plan. EU issuers had to report under international financial reporting standards. They just couldn't basically implement that infrastructure, at the same time having to reconcile to U.S. GATT. So they decided: "We're going to basically stay local." With the 144A market developing as much as it did, there was no need to have to come public in the U.S.

KD: Anything else that we should talk about that I haven't covered? At this point, is much of your job working with foreign firms to get into the U.S. financial markets? Or are you paying a lot of attention, from your perspective, to the foreign markets now?

EG: We're global. We have presence in fifty-one countries. So I do things around the world: Australia, Europe, Canada, here, and so forth. I'm in an advisory role, which is nice—I don't have to worry about transactions, but really give advice on various things.

KD: You're looking a lot of different regulatory regimes besides the SEC.

EG: Oh yes. I don't know whether you know, but Ethiopis Tafara put out his proposal, and I was a commenter on that, and I participated in the SEC roundtable on mutual recognition, which focused on broker/dealer and exchanges. I then gave a speech at the SEC Historical Society, where I wanted to expand mutual recognition for offerings, and then published an article in the *Capital Markets Law Review* that Oxford runs. I've given some talks on that and I've become quite involved in the whole debate about mutual recognition going forward. I have some pretty strong views on it. So I've become engaged that way, with the SEC. I talked at an IOSCO conference in London in October 2006 and in Tokyo in 2007 on this whole issue of how we need to have regulatory cooperation; we need to have more mutual recognition. I've become quite engaged recently in sovereign wealth funds. I gave a talk at Stanford, and I'm giving a talk at Duke, and will give a talk at Harvard, on what the implications are for sovereign wealth funds, because they've made a significant investment in Citi, Merrill Lynch, Morgan Stanley, going forward.

KD: Given your perspective, I'm curious as to whether you see the influence of the SEC in these other regulatory regimes around the world.

EG: I think the SEC is still probably the most respected securities regulator globally. Though I think there's a growing sense of frustration that it's not particularly flexible and that it is not as international as it could be. It has always assumed before that it didn't have to necessarily negotiate. Two things happened that made it become aware that other markets were developing. The first one was when the financial services action plan was adopted in Europe, and there was a proposal that U.S. firms, if they weren't subject to a regulator at the holding company level, would have to be subject to European regulation. Most broker/dealers don't have regulation at the holding company level. So the SEC worked with Goldman Sachs, and others, to put in place the consolidated supervised entity regime, in which they voluntarily are subject to SEC supervision, which means they don't have to have comparable supervision in Europe. Now, that was the first time that Europe, in a sense, forced the SEC to become a little bit more flexible. That led to the international financial reporting standards debate, which has really worked out quite well, because now reconciliation has been eliminated. So, the dialogue is there. The question is: Can the SEC take a bit more leadership? Cox would like to, but I think he's a bit frustrated because of the political environment, and the structure of the SEC as an independent agency, when you've got five Commissioners, not all of whom agree.

KD: Your time at the SEC, the perspective it gave you, how has that affected the way you're approached your work since then?

EG: Effectively, it transformed my life. It led me to be willing to go to Japan, and to London, and to become involved in this. I've become fascinated by the issue: What's the fair way to regulate markets? I was very, very lucky—life is luck. I was lucky to be able to get that position, and it was the best thing that happened to me. There's no doubt about it.