Securities and Exchange Commission Historical Society
Interview with Ethiopis Tafara
Conducted on April 19, 2006 by Wayne Carroll

WC: This is Wayne Carroll of the SEC Historical Society on April 19th 2006 with Ethiopis Tafara of the SEC Office of International Affairs. Ethiopis, thank you very much for taking time to talk with us today.

Before we get into your arrival at the SEC, I'd like to just set the stage and mention a couple of facts about the office itself. My understanding is the office was set up in 1989 under Chairman Breeden. That was also the beginning of the International Institute and, as we speak, the 16th Institute is actually underway. The roots or origins of the office lie actually in Enforcement as I understand it. There is an oral history interview of Michael Mann, who was the first Director of the office, also in the Virtual Museum. He came from the Enforcement side and apparently a lot of the early efforts of the Office were on the Enforcement side. Approximately 10 years later you transitioned to the SEC and please let us know how that transpired.

ET: Prior to joining the SEC in 1999 as an Assistant Director in the Office of International Affairs, I had served as one of the counsels to Chairperson Boran at the CFTC. I'd had a fair amount of contact with the SEC's Office of International Affairs by virtue of the time I had spent in the Enforcement Division at the CFTC, where we had worked with the SEC's Office of International Affairs on a number of cross-border enforcement issues. We interestingly met abroad, as part of international meetings where enforcement issues were discussed, and given that we both, the CFTC and the SEC, were representing the United States, our views and our interests were aligned. In that context, I got to know the operation of the SEC's Office of International Affairs and its staff, and at some point it seemed to make sense for me to join the office.

When I joined in '99, the office was about 20 people strong. 10 years on from its creation the primary focus of the Office remained enforcement -- and that is true even today, several years beyond 1999. By that point, the Office of International Affairs and the SEC had gotten to be quite good at the information sharing business, as I tend to call it. Many of the early issues and kinks associated with cross-border information sharing had been worked out. Numerous bilateral MOUs had been negotiated and concluded with our principal counterparts from around the world, and in most instances, through those MOUs and through other mechanisms, the Office was able to collect information to help build the investigative record for the Division of Enforcement's cases that had international components to them.

Cooperative enforcement remains the meat and potatoes of this Office, but there has been somewhat of an evolution both in the issues that we deal with in the cross-border enforcement context as well as the mechanisms that we use for cross-border or assistance. Taking the issues first, in the beginning it was mostly about information sharing. In '89 when this Office was created there were few regulators around the world, including the SEC, that had a statutory authority to compel information on behalf of a foreign counterpart. By 1999 many jurisdictions had actually gone out and gotten that legislative authority, the SEC included.

The new frontier of cooperative enforcement covers other kinds of assistance; for example, asset freezes, we spend a fair amount of time and resources tracking down the assets of the fraud investors where those assets have moved beyond the borders of the United States and figuring out ways to freeze those assets in the jurisdiction where they're located, in the interest of having those assets available to satisfy a judgment obtained at the end of an enforcement action.

This is proving to be an interesting and complex area and one where we think we as regulators around the world should start thinking about whether or not to get legislative authority to freeze assets on behalf of one another in the way that we now are able to compel information on behalf of one another. That's just one example of the kinds of issues we encounter in the cross-border context today. The mechanisms have also changed somewhat; as I said earlier, we have close to 30 bilateral cooperative enforcement arrangements with counterparts from the around the world and they have served us very well. However, by about 2001 we realized as an international regulatory community that a multi-lateral MOU might serve a symbolic function in a couple of ways. It would serve to articulate what the regulatory community felt was the minimum regulators should be able to do in providing assistance to one another in enforcement cases, an articulation that I don't think has been previously made. But, by the virtue of having this multi-lateral MOU out there and known, it would create an incentive and a momentum towards joining and joining only being possible if you could meet that minimum requirement. And it has actually had that effect. The MOU was finalized sometime in mid-2002 and the original signatories must have been about eight strong--we're now close to thirty strong and there are a number of new applications under consideration. I think there are 40 applications in the pipeline and that means we have 60 countries that in the short term are going to be in the position to--at the very least--do a couple of things. They will be able to collect information from banks and brokerage firms. Indeed, they'll be able to compel that information, share it with a foreign counterpart and that foreign counterpart will be able to use it for its investigations, its proceedings, and would share the information with the criminal authorities in their jurisdictions. That would be a very different landscape from what we had in '99 and certainly what we had in '89.

And that's one of the ways in which the International Enforcement Program and the work of the SEC's Office of International Affairs has evolved.

WC: Do the bilateral agreements retain some relevance?

ET: They do retain relevance in that our bilateral agreements require a greater commitment; the multi-lateral MOU is a minimum and at a minimum there's an expectation that you'd be able to get bank and brokerage records and you'd share them, but under our bilateral arrangements we get records from the Internet Service Providers. We get records from telephone companies. In short, there's a world of information beyond simply bank and brokerage records that we're able to get under our bilateral MOUs and so it still remains a useful tool and indeed we will now only negotiate bilateral MOUs with regulators that can do much more than simply get bank and brokerage records for us.

WC: I imagine that the focus of information being sought at the time the bilateral agreements were being negotiated was pretty much focused on the paper world, so what you have in your own files or files to which you had access perhaps other agencies I imagine the fulfilling any kind of request was kind of an either/or situation--either you had access or not. Has technology increased the expectations that you may have to go and do some digging from third parties in order to fulfill requests for information?

ET: No; interestingly that expectation was there from the beginning. The expectation was that you'd be able to compel a broad range of information. 21(a)2 of the Exchange Act, an amendment sought and obtained by the Commission in 1992, basically says we will compel any information from anybody in the United States if it's requested of us and it's relevant to an investigation into potential securities violations being conducted by a counterpart. That

means getting information that is not necessarily in our files and only available from some third party and issuing subpoena upon them for that information.
Of course, it was also contemplated that we share information that's in our files. That has always been an expectation.

The truth is that things have changed somewhat for our counterparts. We have the broad powers when it comes to information sharing. However, when we started out there were jurisdictions that could only get information from the regulated community. Many of those regulators are now in a better position; they can get and share information not only from the regulated community but from others in their jurisdiction as well.

Another difference between us and our counterparts, and between then and now, is the need for testimony. I think when we first entered into MOUs and sought information from our counterparts from around the world early on in the '80s and '90s we were seeking, as you say, documentary information. Today it's fair to say that, more often than was certainly the case 10 years ago, we're seeking assistance in obtaining testimony, in other words, asking our counterparts to obtain a statement from somebody in their jurisdiction, a statement that we would then use as part of our investigative record.

WC: You mentioned that some of the kinks were worked out in the early years but I imagine certain areas such as compelled testimony, some kinks may resurface, such as some other structural differences in the common law versus civil law approaches to testimony?

ET: Absolutely; and indeed there are kinks to be worked out among the common law jurisdictions. **[*Laughs*]** Yes, on the continent and in most jurisdictions that have civil law systems, the regulators there are unable to compel statements. They can take a statement but they can't issue subpoenas and require somebody to give a statement and so we have to figure out how we get statements under oath in the jurisdiction. But interestingly enough we encounter issues in getting compelled statements in common law jurisdictions. For example, if you ask for the UK-FSA or fthe Canadian Provincial Regulators to compel a statement on your behalf, you have to confront the fact that self-incrimination attaches at different points under our systems. In the UK, and Canada, and Australia, the right against self-incrimination attaches at the time of the trial which means when a regulator compels your statement you must comply. The statement can't be used in a criminal proceeding but you have to give your statement. In the United States that's not the case; the right of self-discrimination attaches at the time of the asking of the question. So as soon as we ask you the question if you believe it's going to incriminate you, you can assert your right against self-incrimination. And so we find ourselves in these situations--we go to a common law jurisdiction and we ask them to compel the testimony; the person whose testimony is being compelled will say well wait a minute. I'm giving you a statement and once I give it to you, what assurances do I have. US criminal authorities won't use it at trial that I haven't asserted my right against self-incrimination and you won't let me assert that right because in the UK it attaches at a different point. It requires some careful thought on our part and we do work with our counterparts in trying to find ways to make sure that statements are obtained taking into account the rights that an individual has both in the jurisdiction where the statement is being taken as well as the United States.

WC: It appears that the Office is involved in many more areas aside from enforcement as evidenced by the multi-lateral policy initiatives, so you're now faced or dealing with issues related to accounting, market regulation on a global level; how has that impacted the work of the Office?

ET: Well **[*Laughs*]**--it's made it difficult for us to cover such a broad waterfront. As we've taken on more international regulatory policy workers, we've had to take pretty much the same number of attorneys and professionals and apply their time and skills to that many more issues. But you're right; there's been an evolution in the issues that this Office addresses where I think say 10--15 years ago 70--80-percent of the work was enforcement related; today I'd say 50 to 60-percent of it is enforcement related and then another good 30-percent of it is what I called International Regulatory Policy, which involves two things. It involves representing this agency in international organizations that are developing principles, standards, papers, best practices intended to have some application in the securities market and making sure that those principles and those standards reflect our views and are consistent with the regulatory approach in the United States. And there are a plethora of those organizations as--as I'm sure you know you know—International Organization of Securities Commissions or IOSCO, which is extremely well known. But we also participate in the Council of Securities Regulators of the Americas and the Financial Action Task Force and the OECD, all of which has big resource implications for the Office of International Affairs. The other part of international regulatory policy is looking at the impact of SEC rulemaking beyond the borders of the United States and informing and advising the Commission and staff of that impact, identifying areas where we might be creating some conflict of law, and identifying ways to mitigate conflict if at all possible. It requires some understanding of legal regimes and foreign regulatory philosophies and it is something really that has burgeoned since the passage of *Sarbanes-Oxley*. There, we were confronted with a statute that had to be implemented within a short period of time and had application to anybody who was participating in the US market domestic or foreign, yet we recognized that some of the provisions could conflict with provisions that applied to foreign private issuers and foreign accounting firms that were present in the US.

Now that's not to say that these sorts of issues didn't get dealt with prior to 1999. Indeed, the international disclosure standards, which I think are a major milestone in the international regulatory community and a major contribution of IOSCO, were finalized in 1998 and those sorts of issues got dealt with by this Office as well. But I think the increasingly globalization of markets has required that we do more of that sort of work here in the Office of International Affairs.

I wouldn't say that our relationship with the other Divisions and Offices has necessarily changed, but I think we are becoming a more important service outpost in that we now have as clients not only the Division of Enforcement and the Commissioners and Chairman, but in addition we have additional clients in the Office of the Chief Accountant, the Division of Market Regulation, the Division of Investment Management; it is their rules that we're looking at and providing advice on in terms of the implications for the rest of the world.

WC: I guess the flipside of this development in relation to SEC rulemaking and legislation is that not only are you giving more thought to the impact on foreign participants but they themselves are at times actively involved in the process be it in the public common process or in other ways?

ET: Yes; that's absolutely right. I mean there are a couple of things there. There is more active commentary and engagement on the part of the foreign market participant community and we spend some time reviewing their comments, interacting with them, meeting with them to hear what their issues are and understanding what their concerns are; that part happens directly with the market participants. We also have started engaging in what we call regulatory dialogues and these are bilateral in nature, so we have dialogues with China, Japan, Europe, the Committee of European Securities Regulators, and the objective there is

to sit down and talk with foreign counterparts about the regulatory concerns we each have, find out which ones we have in common, and by virtue of that discussion hopefully move towards solutions and regulatory approaches that converge as opposed to diverge, given that the market participants are global in their activity and global in their presence. Regulation is national by definition but markets are global and the only way to make this work is for regulators to coordinate, collaborate, and cooperate. This has become another resource application for us in addition to enforcement -- participation in international organizations and reviewing and advising regarding rulemaking. We also engage in these dialogues to inform ourselves of what the issues are that arise from our regulation and also to try and devise solutions that minimize conflict.

WC: As part of that process what kind of impact does that have on staffing issues? Do you now look for people with some understanding of foreign legal systems, foreign market and corporate structures; is that part of your training program?

ET: **[*Sighs*]** I think the profile of the staff hasn't changed all that much. I mean we end up recruiting and attracting people who are versatile and who have broad-ranging interest and broad-ranging skills. It's an interesting skill-set that you need to do well in this office. There are elements of diplomacy, legal analysis, cultural sensitivity; you can imagine the kinds of qualities you would need to deal in the environment in which we operate. Many of the people who are attracted to this office do have backgrounds whereby they've been exposed to regulations in other jurisdictions and to foreign legal systems. It's not a prerequisite, nor are language skills, although I think just because of who we are we end up attracting those sorts of people. I've got a staff of about 25 people now and I'd say 10 of those people have language skills and the other 15 don't but that is in no way a handicap. What's more important is cultural sensitivity, a sense of diplomacy, good legal analysis, good understanding of how laws match up against one another in a cross-border context; those are more important skills than language skills.

WC: Some of the developments that we've covered--has that impacted the overall role of the Office within the SEC?

ET: With the passage of *Sarbanes-Oxley*, we undertook more analysis of the impact that our rules would have outside of the United States in a systematic way which was not, I don't believe, the practice before. That has led to people asking us to do more and more of that, so the role for the Office within the SEC has changed considerably.

WC: One of the early areas of the Office, Technical Assistance, continues to be quite important but I imagine the type of the assistance and form of assistance has changed over time.

ET: That's a fair statement. The two Institutes remain the foundation of our Technical Assistance Program. We still have the spring and fall Institute, the spring Institute being a two-week institute where we have in attendance regulators from emerging markets and where the program focuses on, what I'd like to call Securities Regulation from A to Z, drawing on a faculty of senior staff from the SEC and practitioners from the US and elsewhere, as well as Wall Street, and the fall Institute being more about enforcement and market oversight, catering more to developed markets, again with a faculty from the SEC practitioners and Wall Street. These Institutes remain the foundation of the Technical Assistance Program and I don't think that will change any time in the near future. But as you point out, we are now also doing a lot of what I term bilateral and regional training; bilateral training involving requests from a particular jurisdiction to come and put on a

program on a particular topic whether it be broker/dealer inspections, whether it be market surveillance, whether it be accounting and corporate governance--those programs usually are three or four days long involving about three or four people from the SEC and sometimes from the NASD and elsewhere. And then increasingly we've been doing regional programs -- trying to get more bang for our buck -- where we put on a training program of the kinds that I described in the bilateral context, but where we ask the host to actually open up the training program to other regulators from the region so that we're reaching an audience broader than simply the regulators in one jurisdiction. On a yearly basis I'd say we do anywhere from six to twelve of these bilateral/regional programs. I suppose this is an evolution in the Technical Assistance Program here at the SEC, and indeed, I think we have to turn away requests for bilateral and regional training--there are so many of them.

WC: Has there been any kind of geographic shift to the Technical Assistance? In the '90s there were a lot of economies converting from a socialist model to a market economy and there were all kinds of programs going on in Eastern Europe. How has that developed since that time?

ET: It's a very perceptive question and I think that's absolutely right. In the beginning when this Office was first established the focus, as dictated by historical events, was really Eastern Europe and the former Soviet Union. I think over the course of time that has shifted with an initial shift towards Asia, starting in '98. We started expending a fair amount of resource in China and other Asian markets and then a shift in the early 2000 towards the Middle East -- that continues. Now our attention of course is taken up by the big jurisdictions, such as India, we are doing a lot of Technical Assistance there and China.

Because our enforcement cases have led to needing the assistance of countries within this hemisphere, we more recently have decided that we need to expend a little bit more time and effort in Latin America and the Caribbean, so we've put on, over the course of the past couple years, programs in Brazil and Ecuador and Barbados and other countries in the region and I expect that's a trend that will continue. This hemisphere has become more important for us both from an enforcement standpoint as well as a regulatory standpoint.

And lastly because we have historically neglected the continent, we have decided to make the effort to try and provide some training in Africa and we had our very first training program in Nigeria last year and expect to do another one in East Africa sometime soon.

WC: This is also an area where the impact of technology has been felt. You have a web-based training program in order to leverage resources; how has that impacted such programs?

ET: I mean technology as you know is terrific. It makes things easier; it makes things cheaper. The web-based programs allow us to reach regulators around the world without expending the cost of travel, without expending the cost of time spent in a country; there's something as simple as the materials we prepare for the Institute--my paralegal staff will tell you that five years ago preparing for an Institute and putting together the materials was a huge headache in terms of photocopying and binders and the like. Today we put it all on a CD-Rom, so it has made it possible for us to do more with less and we continue to look for ways to use technology to promote the objectives of the program.

WC: I imagine that in keeping with globalization the ripple effect of developments in the US is a lot quicker than it was in the past, so say developments in mutual funds or hedge funds quickly are found in other jurisdictions as well. Has that led to say more specific or detailed requests for assistance and quicker assistance?

ET: I'm not sure it's led to more detailed requests for assistance or quicker assistance. It has led to an increasing call for discussion about the regulatory response given the prevalence of hedge funds and the breadth of hedge fund activity for example. What happens in our markets has a ripple effect beyond our markets and what you see increasingly are requests from our counterparts to sit down and talk about how we, the SEC, intend to respond to a particular market development given that they're seeing the same thing and wanting to be sure that we are moving in the same direction in the interest of avoiding market participants arbitraging the regulatory systems. So whereas I think in the beginning, for example, at IOSCO we talked more about enforcement and more about what I would term generic issues like what are the basic disclosure requirements that should be imposed by companies, today you'll find IOSCO delving into things like credit rating agencies, delving into securities analysts, conflicts of interest. You'll note that each of these matters are hot topics in the United States but of import to other markets and the impact of these matters has led to an international discussion and the development of standards, practices, best practices or principles. This underscores the tendency toward coordinated regulatory responses to common issues.

WC: Before we conclude the interview are there any other additional comments you'd like to make?

ET: I think the Office probably is different than it was when it was first created in 1989 in some respects but in many ways it remains the same. Enforcement is really the driver here and what we spend the most time and effort working on; the number of requests that we make for enforcement assistance on a yearly basis and the number of requests we receive does nothing but increase every year. We're now up to I think 400 requests made and about the same received and that takes a fair amount of time but it really is the source of the strength of the relationships we have with our counterparts. It's our willingness to help each other pursue wrongdoing and take action against wrongdoing and has led to this tight regulatory community and international regulatory community and in that way it's no different from what you would have seen in 1989.

WC: That could be one of the reasons why one of the speakers at this year's Institute said that you have one of the best jobs at the Commission.

ET: I would not contradict that statement. **[*Laughs*]**

WC: Ethiopis Tafara, thanks very much again for taking the time to speak with us.

ET: It was my pleasure; thank you.