

Securities and Exchange Commission Historical Society
Interview with Paul Maco
Conducted on May 12, 2014 by William Thomas

WT: This is part two of an interview with Paul Maco for the SEC Historical Society's virtual museum and archive of the history of financial regulation. I'm William Thomas. The date is May 12th, 2014, and we're in Washington, D.C.

So last time, among the things that we covered was the amendments to 15c2-12, and I was wondering if I could ask you for a little bit more detail on what was possible and not possible at that time with respect to continuing disclosure. I've spoken to Kit Taylor, and just recently Elisse Walter, and they were saying that in their view the standards that we have even today are inadequate, and so I'm curious as to the details of what affected the form that took at the time.

PM: Well, there's a little bit of a back story to it, and that goes to Commission efforts following the New York City financial crisis, and I think we spoke a little bit about this. After the staff investigation in 1977, Senators Riegle and Williams introduced legislation and were holding hearings on amending the securities laws to require at least some level of registration for municipal securities. In other words, there were two people in the Senate that were interested in carrying the water, as it were, on legislation, which is absolutely necessary for anything ever to happen, and so there were two champions who were taking a good look at that.

The result, as always – there’s a very, very strong pushback from cities and towns, local governments, and the Municipal Finance Officers Association. Joel Seligman, in his book, *The Transformation of Wall Street*, talks about historically how the drafters in Congress had always thought to register municipal securities, but the mayors of cities and towns across the United States, as he says, rose en masse to push back. They did this with respect to the ‘34 Act, they did this with respect to the Maloney Act, which brought in the NASD, and because munis were carved out of that there was a necessity to go back in ‘75 and create the MSRB by amending the ‘34 Act.

There was a staff report done by the Division of Market Regulation in August of 1993, released right around the time that Arthur Levitt had his confirmation hearings. That staff report gave a history of regulation in the market, and identified some reforms that they thought would be plausible. The report acknowledged that a full embrace in Congress could be a challenge, but did recommend, among other things, that the exemption that exists in the ‘33 Act for conduit financings be done away with. And that’s something that the SEC and Congress had gone back and forth with a number of times historically, first with the SEC in a rulemaking, saying effectively, “We’re going to treat that as a separate security that requires registration,” and Congress coming back, sticking in an explosive reference to securities that are tax-exempt under a section of the Internal Revenue Code. That’s now obsolete, but nonetheless it’s still in the statute, Congress coming back and this sort of tennis over the decades between the SEC and Congress on dealing with conduit financings.

That, too, surfaces again in the most recent 2012 report of the Commission on the municipal securities market. It was recommended by the Division of Market Regulation in their report. They, however, recommended also that the Commission consider using its rulemaking power to provide a framework for continuing disclosure to the municipal securities market, and that started this period where in the fall of 1993 the staff of the Division of Corporation Finance, a woman named Ann Wallace, Elisse Walter, Amy Starr, and several others were, along with the division of what's now Trading and Markets, were interviewing participants in the municipal bond market about disclosure practices.

They were reviewing sample official statements and interviewing a lot of different people, while at the same time the testimony that Levitt gave before his hearing confirmation, as well as subsequent statements, that he wanted to see continuing disclosure in the secondary market - this prompted a group of municipal market participants that became known as the Gang of Ten to organize and really come up with something that they could live with and present it to the SEC.

This of course was consistent with the way Chairman Levitt worked. He liked to throw a goal out there, said, "This is where I intend to go," and allow the market to come in, understanding that he was going to get there but he's giving them room to suggest ways that would be amenable to them, that they might be able to live with, as part of getting to that goal. And that's exactly what happened. The discussions resulted in three releases on March 9th of 1994. One, an interpretive release of application of antifraud provisions

to municipal securities transactions, which – there’s a legend that that was in somewhat disorder until Elisse Walter took it home, stayed up all night and returned the next morning with a literary masterpiece that flowed consistently and everyone was happy with.

The second was proposed amendments to 15c2-12 that incorporated some of the suggestions from the Gang of Ten with respect to structure and format. The third was a requirement that broker-dealers and municipal securities dealers trading municipal securities in the secondary market disclose riskless principal markups, or markups on riskless principal transactions. That one was not followed through on, but on November 10th, ‘94, when the SEC adopted final amendments to 15c2-12, the Commission noted that they were going to hold it in abeyance to see the progress that the MSRB made with its effort to institute a real time transaction reporting system. It was going to be on the shelf as a club that could be pulled down should that effort stall, particularly because of a lack of industry cooperation. So those three things came into place.

The barrier to Commission regulation of the municipal market is often characterized as the Tower Amendment. That’s a section in 15(b) of the Exchange Act that basically says that nothing in this section – that is, this section Congress added in ‘75 to create the Municipal Securities Rulemaking Board – shall be interpreted as authorizing the Commission to require statements to be filed with it before municipal securities are offered in the marketplace.

A lot of people point to that as the blockade. It really isn't. I mean, it's sort of a "yes, we haven't changed anything" statement. The blockade exists in the '33 Act and the '34 Act themselves, where Congress built in express exemptions to the registration and continuing reporting structure for municipal securities that applies to the corporate world. Those sections would have to be dealt with in some shape or form in order to give the Commission regulatory authority over the form and content of municipal disclosure, and that's always where the hurdle comes up.

It's interesting now, in light of a contemporary initiative by the SEC – the Division of Enforcement has initiated an MCDC, a Municipalities Continuing Disclosure Cooperation initiative, and they are offering for a short period of time lighter enforcement penalties that they would propose to the Commission for issuers and underwriters who turn themselves in for having made, in the case of the issuers, a material and misleading statement with respect to compliance with their continuing disclosure agreements, and underwriters who fail to form a reasonable basis for belief in the accuracy of statements that issuers make with respect to their compliance with their continuing disclosure agreements.

All of this is interesting because you would never have something like that happening in the corporate world. A case in point would be Harvey Pitt's "I'm mad as hell" speech after the WorldCom \$4-billion rewrite was announced, when he ordered and the Commission ordered the Fortune 1000 to have the CEO and CFO personally certify as to

the accuracy of filings with the Commission before the next quarterly filing date, which happened to be the middle of August of that year, just do that sort of thing with respect to continuing disclosure requirements. But now, because that's not in place, the only leverage directly is upon the underwriters who are routinely inspected by both the SEC and by FINRA, and they can come under regulatory pressure so there has to be this kind of roundabout structure.

15c2-12's continuing disclosure framework is a Rube Goldberg-type construction, and it often reminds me of when I was in college there was a notorious *National Lampoon* magazine cover with a picture of a dog with somebody holding a revolver to its head and the caption, "Buy this magazine or we'll shoot this dog." It basically is, "Issuer, provide your continuing disclosure or we'll shoot your underwriter." That is kind of the essence of the mechanics put into place. At the time it was put out, it received a good bit of cooperation from the Group of Ten and the issuer groups that participated in that larger dialogue with respect to rulemaking that took place here in Washington. But outside of the Beltway there was skepticism and resistance, to say the least. It took a while for it to get underway.

I think it's become quite successful now through the MSRB's EMMA system, but that has as much to do with the advance of technology as it does with any sort of profound regulatory insight or change in cooperation. When 15c2-12 was put in place with respect to continuing disclosure, the Internet was in its infancy, disclosure was often mailed in to the MSRB or to the NRMSIRs, as they were called, in paper form that evolved to then

use of a diskette. The idea of submission electronically to EMMA, which occurs today, very similar to EDGAR, was just not really on the drawing board.

The reluctance to establish the MSRB as a repository at the time had to do a lot with the sense of tension between groups like the Government Finance Officers Association and the MSRB. Historically, there seemed to be a good bit of tension between the MSRB and GFOA, and the state treasurers and others. The issuer groups viewed the MSRB and their initiatives as some sort of nose under the camel's tent to the eventual regulation of issuers of municipal securities. It took a good bit of education at the time, and The Bond Market Association, the National Association of Bond Lawyers, other groups really did quite a bit in terms of model documents, educational seminars, and the like to put that in place. But it took a long period of time and a number of efforts during the last twenty years.

When Chairman Levitt left the Commission, I left as well. The Office of Municipal Securities had been created in a direct reporting position to the Chairman and the Commissioners. It was created the same day as OCIE was created, in the same sort of write-up that the Commission had to send over to Capitol Hill, letting them know that they're doing this restructuring. But in the spring of 1995, the inspection groups from Market Regulation and Investment Management were removed and put into a new group called the Office of Compliance Inspection and Examination. And at the same time, in the same paperwork, if you will, the Office of Municipal Securities was created, reporting

directly to the Chairman, given a staff of seven people, and we started recruiting and hiring.

WT: Yes, this is the point where we left off last time: you were about to talk about the creation of the Office of Municipal Securities.

PM: Right. And that had been in the back of Chairman Levitt's mind. When I interviewed with him in October of '93, he had said he contemplated some event precipitating that structure being put in place, but wasn't going to do it off the bat. He also thought that the idea of working with industry groups was critical to any success that the Commission would have in the environment that we had, that is, not a lot of regulatory authority, making the most of what we did have.

It was very fortunate with the Office of Municipal Securities to attract a fellow named Mark Zehner. Mark was a bond lawyer from Philadelphia who worked for a firm, Saul Ewing, very capable, very hardworking. He commuted every day from the Main Line of Philadelphia to Washington, D.C., so getting up at some ungodly hour of the morning and in the office by 8:30 every day. He'd work until six or seven in the evening and take the train home, and he did that for two years. He was a terrific resource, and was assigned to work with different groups in the Enforcement Division on particular cases, as well as taking on a lot of the internal work that we did. He was particularly valuable in the work that he did with respect to yield burning and the various yield burning investigations.

He came in as an attorney fellow, and in order to hang on to him – it really seemed unlikely that he'd be able to persuade his wife to go along with another two years in Washington – but we internally discussed the idea and made the suggestion to the Chairman that he would be a great person to see if we could secure in the Philadelphia office, perhaps in the Enforcement Division. Mark transferred to the Division of Enforcement in Philadelphia and has been a key leader in the Enforcement Division's efforts in the municipal securities markets ever since. He's never been the leader of that group. Elaine Greenberg, who just left, led it for a good time with Mark as her deputy. He's in the same position now with LeeAnn Gaunt, but clearly has been a main factor in the progress that they've made in that sector.

What we did after the office was created, we had a number of new roles to really take hold of and push. We saw it really as the reason for our existence to work with the other divisions and the Commission to make sure that in, not only in rulemakings and actions that related directly to the municipal securities markets, but other actions, such as in the area of investment management that tied into the municipal market, such as Rule 2a-7 money market funds, they would have the support and the technical information available to them, with respect to the municipal securities market, that we were able to provide. Or if we couldn't provide expertise directly to them, we'd certainly frame the issues and indicate where that expertise could be tapped into.

We, along with the other divisions, particularly the Division of Corporation Finance – if there was a disclosure case making its way up to the Commission in an enforcement

recommendation, typically there's consultation with the other divisions whose program may be affected by that enforcement action. We took active participation in that. A number of the people, I believe who are now in chief counsel's office in Enforcement – I think Charlotte Buford is an alum; she came to the Commission as a young staff attorney in the Office of Municipal Securities – there have been one or two other people who've worked in that office as well who had their exposure to the municipal securities enforcement aspect either working in the Office of Municipal Securities at the time or working with someone in the Office of Municipal Securities in developing an enforcement case.

We followed through on the initial training program on how to bring an enforcement case that I had mentioned in our last interview, with quite often ongoing assistance to various divisions, or various groups in the Division of Enforcement or offices that were conducting an enforcement investigation, or actually proceeding through trial, such as the Miami office in connection with the City of Miami case. So there was a lot of sort of interchanging and support.

WT: Could you tell me a little bit about how this case was developed? When I was preparing for this interview, I actually was a little surprised at how early the Miami investigation proceeded before the ultimate resolution to that investigation. It's over five years, right?

PM: Yes. How an enforcement investigation matures is subject to a variety of different circumstances, some of which can be staff resources available, some of which can be the

level of cooperation by the party or parties being investigated. There were a number of matters of interest that the Miami office handled. The fellow running the office at the time was a former assistant U.S. attorney named Chuck Senatore. There was an assistant named David Nelson, who had also been a former AUSA and ultimately became the head of the office for a good period of time.

There were a series of investigations in cooperation with the local U.S. attorney's office into an underwriter, and a public corruption trial relating to the Port of the City of Miami. I think it was in one of these matters where, in spite of a videotape and audio recording of money changing hands in a hotel room, the jury managed to come back with a not guilty verdict. But the Miami office was particularly supportive of the municipal effort. They had two fellows who were in the inspection group, the equivalent of OCIE at the time down there, who were top notch investigators and they lent a good bit to that as well.

The Miami case really was a matter of, again, conducting the investigation. It's really the first time that a city decided to push back, and the counsel for the City of Miami at the time was a fellow named Tom Tew, who I think took the matter all the way through an administrative proceeding. Earlier, Cesar Odio, who had been the city manager, agreed to settle, but that went through a trial before the administrative law judge, then an appeal to the Commission, a hearing before the Commission, sitting in its capacity as an adjudicatory body, and a decision out of the Commission, and I think the course of that was probably a good five or six years, from beginning to end. That's just how long they can take.

Orange County, in contrast, which really – because of its size, because of the bankruptcy, because it involved a series of very complex contracts that were easily characterized by the press as derivatives – captured the attention of Congress and the media because of this concern about what these derivatives were and what risks were unknown, what were the known-knowns and the unknowns and so on, in a Rumsfeldian kind of way. That really progressed fairly quickly within the Commission, at least with respect to the pursuit and settlement with Orange County.

What was unique about it – again, from time to time the Commission would assign, or would participate in a bankruptcy proceeding, if it considered the Commission's participation beneficial or important to investors or to markets. And based on that, there was a lawyer in the general counsel's office named Katharine Gresham, who had worked with the appellate group, who also had some experience with prior bankruptcies. But we really needed somebody out on the West Coast, and so there was a woman who worked out of the Salt Lake office who had bankruptcy experience and I think was actually brought in as a special assistant. Her first name was Bobbie, and I can't remember her last name, but she had been hired by the Salt Lake office and handled, effectively, all of the proceedings in the Orange County bankruptcy proceeding on behalf of the Commission.

We participated in hearings before the judge, we had an appearance before the judge just by telephone, and a conference with a judge a couple times, and so this was one string of

the Commission's involvement in Orange County that continued along. The other was the series of negotiations of settlements, as well as the issuance of a 21(a) report, the settlement with the county and county board of supervisors – the 21(a) report relating to the individual members of the board of supervisors. And then there were several small cities and towns who had issued bonds solely to invest their proceeds in the Orange County pool and there were administrative proceedings brought and settled with them, which also took a period of time.

As this was going on, the Commission was becoming more and more comfortable with bringing enforcement actions against local governments and local government officials, and had really gotten into it a bit beforehand, before Orange County. But Orange County broke the ice, and the Commission saw that it could be instructive in administrative proceedings, in particular, explaining what the disclosure failures were, or if there happened to be some other conflict of interests involved with financial advisers or underwriters, articulating that. And so these cases became much more frequent. And depending upon how you count them, I think over the time I was there we probably had 100 or more enforcement actions or proceedings relating to municipal securities.

One thing that we did during this time was – and really, again, Chairman Levitt was very concerned that we develop the Commission's approach to the municipal market as fully as possible – we'd go through this process of consulting with other groups in the Enforcement Division before an action memorandum would be sent up to the Commission. I spoke with Jack Katz, who was then the Secretary, and asked him if there

was any reason – since the Division of Enforcement got up and spoke and closed Commission hearings on these matters and the General Counsel got up and spoke – what was to prevent me, as head of the Office of Municipal Securities, from submitting a memo that may take a different view as to who should be charged and what the charges should be and submit that to the Commission, and then be available to discuss that in closed Commission meetings on enforcement matters with the commissioners. He said, “Nothing.” I talked about it individually with some of the Commissioners and they thought it was a great idea, and so I started doing that, and our office started doing that.

It was a little testy at first with the Division of Enforcement, but ultimately it became very smooth and I think at the end of it the whole process worked better. The charging was better informed and I think more in line with the overall effect that the chairman had hoped to achieve, and so I think that was a key development. And when the office was downgraded and folded into the Division of Market Regulation after Chairman Levitt left, and after I left, the office was like three layers down, so that was one feature that disappeared because it was subsumed within another division. But a good portion of the mission, at least as I saw it, had been accomplished, namely that the ice had been broken with respect to bringing enforcement cases, so much so that – again, paralleling all of this was yield burning.

WT: Yes, I wanted you to go into a little bit more detail on that as well.

PM: Sure. That focused the marketplace, as well as the Commission and the Division of Enforcement, on the importance of SEC vigilance in the marketplace, particularly concerning practices relating to underwritings and secondary market transactions. And it was sort of the precursor, if you will, to the GIC bid rigging investigations that are concluding now. But a couple things that were really significant in that – again, a very complex subject matter – Mark Zehner, again, was particularly important in helping. The two of us wrote a memo to the Commission that was a half a page just explaining why yield burning was a violation of the securities laws, and to be able to explain it in half a page was actually not the challenge it seemed. You just had to set all the technical tax stuff aside and focus on the key result of compliance equaling tax exemption, noncompliance equaling taxable bonds, and the materiality that that would make to an investor.

Then one of the first cases to come forward was out of Philadelphia and involved Elaine Greenberg, who later headed the group, and that really opened the door. Bill Baker and Larry West had been working quite diligently for a good period of time reviewing transactions, interviewing the various witnesses, in building their investigations. This was parallel – there's a fellow named Michael Lisak who had worked at Smith Barney and became a whistleblower. He hired a firm, Phillips & Cohen, that has nice little quaint old building off of Dupont Circle that specializes in bringing qui tam cases, and Lisak filed a qui tam action as a whistleblower in trying of course to obtain his share of the recovery, focusing on yield burning, at the same time that the Division of

Enforcement was pursuing its investigations. And so they proceeded along a parallel track.

WT: How did it come to light for Enforcement in the first place? Lisak is often kind of portrayed as the beginning point to those investigations, but you're suggesting that they existed before that.

PM: Well, my recollection is that he had come in and spoken with division lawyers at the time, and there were other people who were dropping dimes, if you will, with the division, talking about some strange practices and noticing that underwriters were effectively buying the reinvestment. There was this strange, sort of from an economic point of view – the underwriting spreads were really diminishing. I mean, they were shrinking dramatically, and it was because of competition, but the competition was not among this great pool of underwriters. It appeared to be to get the transaction so that you'd be able to do the reinvestment of the bond proceeds in the escrow fund, particularly if it was an advance refunding – not so attractive, but still potentially there for a construction project where you'd have a three-year construction period. But to be able to fund the escrow for a massive advance refunding was potentially very lucrative.

And so the discount charge for underwriting the bonds, or bringing them to market, really diminished. A tremendous amount of pressure was put on that, of course, which in turn created pressure throughout the marketplace on medium and small firms who didn't have

a desk to do the reinvestment and had no reason themselves to bid aggressively. You nonetheless had this sort of industrywide compression of the fees being charged.

There were a number of moments in that case that were significant. Again, Mark Zehner, we had looked for and started really taking a good look at questions that we thought a lot of times the enforcement lawyers didn't have the time to look at. And we began looking at old fiduciary cases or instances where a respondent had been both a broker and an adviser, to see what came out of them and to see if there was any case law that would be helpful. And we came across this 1939 case, Arleen Hughes, who was a broker but she acted in an advisory capacity in certain instances, and therefore when she did so the circuit court, I believe it was, said that she had a fiduciary duty.

And that's exactly what we were looking for. That had not been overturned; it had just been forgotten. It was there on the books and dusted off and worked its way into a number of papers that ultimately resulted in settled proceedings. But it gave a foundation and much firmer footing to look at financial advisers, for example, who would be the financial adviser on an advance refunding, but work their way into basically selling these securities to fund the escrow. And that was the scenario that was presented in a district court case in Arizona, to which Mark Zehner had been assigned to work with the enforcement people. The Bond Market Association filed an amicus brief on that. The judge came back and found that there was a duty there that had been breached, and that again strengthened the ability of the Enforcement Division to be more aggressive and feel more confident in pushing other yield burning cases.

So, I mean a lot of what we were doing in that instance with Zehner – earlier I had mentioned Hardy Callcott, where there had been a stumbling block in some investigations about reliance on counsel defenses. There are a lot of times it's just sort of clearing out the rubble or clearing pathways in order to promote a Commission enforcement drive, and then taking that to the next level when the cases would come before the Commission in closed Commission hearing, to make sure that the best results came out of those efforts. And we spent a lot of time, again, doing that.

The yield burning really turned out to be industrywide. There was an important cooperation along the way with the Department of Treasury and IRS. Bill Baker and I went over to a large meeting at the IRS with a number of officials and agreed to put in place a memorandum of understanding that allowed us to work as best we could on some of the information barriers that existed. The IRS at the time then decided to start its own office that was going to focus on municipal securities and hired a fellow name Mark Scott, who was going to focus on their own enforcement cases with respect to tax noncompliance and municipal bond issues. Mark hired a team and we talked with him about how our office had a startup, and some of the lessons learned, and ways that we could work together and support what he was doing, and yet, at the same time, offer suggestions on just how to make the most out of the resources that we had available to us, and on some things that we had learned that he might be able to learn from as well. And that proved to be a pretty good relationship over the years.

WT: Those settled around the time that you left the SEC?

PM: Yes, I had planned to stay about five or six years. Indeed, I wrote a little summary to Chairman Levitt when the office was created. My thought was that the office should exist for a certain period of time until its mission was accomplished, and my concern was that it not be an office that would begin to exist solely to perpetuate its existence. I said at the end of five years the continuation of it should be revisited, and if it's there, it should continue. But if not, it shouldn't stay around just because it's there.

Towards the end, we were pushing on both yield burning and trying to wrap those cases up, and at the same time we had expanded pay-to-play. Chairman Levitt was very anxious to really get that to as many different areas of the Commission as possible that touched on the municipal market, and one of the areas that was particularly troublesome was the perceived corruption in the investment of pension funds, and particularly among investment advisers and among broker-dealers who sold or marketed investment advisers to pension funds.

We had worked on the lawyers and we had a particularly interesting go-around with the American Bar Association. We succeeded ultimately in having the ABA modify its rules of professional conduct to discourage pay-to-play. I had started on that early on at Arthur's request. Right after G-37 was adopted I met with a fellow named Michael Cardozo, who is the head of the Association of the Bar of the City of New York, which I also happened to be a member of, having practiced there some time ago, and he was

working with a professor from Columbia named Harvey Goldschmid and we began working on a move to change the ABA procedures.

Cardozo was absolutely terrific in leading this effort. We brought in a number of people. Judge Webster, William Webster was someone who, you know, I called and tried to get a number of notable people to join in on this. Judge Webster embraced it enthusiastically. And we really tried to build up as best we could a varied constituency pushing this before the ABA. Interestingly, just where I work now, I had called Mayor Giuliani's office and spoke to a fellow named Joe Lhota, who recently ran for mayor in the City of New York. Joe is the deputy mayor for budget and a former client of mine many years ago. I had asked if he could get the mayor's support for such an effort, and they embraced it enthusiastically. I mean, Mayor Giuliani was just happy to help and do what he could, and the mayor's office was very supportive at that time in that initiative.

We succeeded in ultimately having that occur. We looked to the independent financial advisors, and a fellow named John White, who was the chair of PFM, along with several others, agreed to sign a voluntary agreement banning pay-to-play. And then we looked to investment advisors and started working with the Division of Investment Management. A rule was proposed that was modeled to some degree on MSRB G-37, but after its proposal it somewhat ran out of steam because the Commission was fighting for a number of different initiatives at the time, particularly accountant independence, and Chairman Levitt really chose to pick his battles and focus on that. And when he left and Laura Unger came in as acting Chair, she put it on the back burner and it stayed there

until Mary Schapiro dusted it off and brought it forward after the scandals in New York and New Mexico and elsewhere really put the spotlight back on it.

So, we were wrapping things up. I pretty much felt that I had accomplished what I wanted to accomplish there. I was very grateful at the opportunity to be of public service of the time, but I felt like I really had contributed what I could contribute and it was time to move to someplace else, do something a bit different. I left and went to Vinson & Elkins, and started teaching again in the evening up at Boston University and I really did that until 9/11 just made that kind of travel a lot more difficult than it used to be. So there we are.

WT: Okay. Could you tell me, I guess summarize kind of what your activities have been in private practice? You were at Vinson & Elkins for twelve years and then you just recently moved here to Bracewell & Giuliani. I know you were involved with the San Diego investigation a little bit, and we probably don't have time to go into it in the detail that it deserves. We only have about five or so minutes left I guess?

PM: Yes.

WT: Yes. Well then, maybe just the grand summary.

PM: A couple of things on San Diego. My colleague on that, a former SEC enforcement lawyer named Rick Sauer, wrote a book a couple years ago, *Selling America Short*, and

he has a chapter in there, his story of San Diego. There's an *American Lawyer* piece on it that sort of gets into a lot of the conflict that came up. San Diego, we were hired to do a review of the city's practices with respect to pension disclosure, a bit different than the type of full-fledged internal investigation; it was specifically targeted to look at that.

At the same time, shortly after we were hired, the SEC announced it was opening an investigation. We had gotten calls, we called the city, they asked us if we could defend that investigation as well and we said, "Well, we can do that if you agree to fully cooperate. Understand there's a potential conflict inherent in that. You'd have to be willing to work on those terms." The U.S. attorney became involved and the city hired separate counsel for that. But it all stemmed really from the city's difficulties with its pension system, and during the good years using the returns in its pension system to provide other benefits.

It highlighted something that went all the way back to the City of New York case and that is some of the inadequate attention paid to pension disclosure. And it is remarkable that you can read the San Diego report that we did, or the one that Kroll did, or some of the conclusions the Commission came to, and go back and look at the New York City staff report from 1977 and the very same issues are there. There, of course, had been a good bit of change since then.

But Orange County I think highlights something very unique about the municipal market that is captured also by the city of Harrisburg, and that is that the political element of

municipal issuers can prompt really different behavior in a bankruptcy proceeding, as well as in an enforcement proceeding, than you'd have in corporate America where you may have various politicians declaring open warfare on each other during the course of the proceedings in order to gain political advantage, which can, among other things, complicate the mission of the Commission in that circumstance.

I've been working with issuers, helping them comply with disclosure requirements, same thing with underwriters, and for a good part also, and more over the last seven years, increasingly representing people in enforcement investigations. That's something that has taken on a good bit of my time. And one thing that we pushed for at the Commission – and this sort of ties back into that – the Commission was holding a lot of seminars with regulators from foreign countries, on disclosure, on other various matters, and we, the Office of Municipal Securities, made the suggestion, particularly with a lot of the emerging states, that – you know, a lot of times before there's a stock market, or if there's a financial market, some of the first instruments that historically hit are debt instruments. I mean, it's the case in the United States. Before the New York Stock Exchange existed, there were debt securities, and some of the earliest securities traded on the New York Stock Exchange were, in fact, debt securities. It's necessary for infrastructure, clean water, roads, and electricity, and having a viable debt market can be important to frontier and emerging markets – and suggested that that be added to the equities type of component that went with these.

It took hold, and I know that the IFC and World Bank continue to participate with the Commission in various training initiatives like that. I ended up working with IFC and the World Bank and the Financial Volunteer Services Corp, with the Kingdom of Thailand, the Thai government, and since 2005 have worked with the United Arab Emirates Securities and Commodities Authority on their regulations.

WT: I see this box from them on your desk here.

PM: Yes. And most recently, we drafted their newly revised corporate bond market regulations, which they adopted at a meeting about two weeks ago. So, that brings you up to date.

WT: It certainly does. Well, we're out of time, I suppose, so I'll just thank you for your generosity with your time over these two sessions.

PM: Well thank you very much. It's a delight meeting you, and I appreciate your patience with the difficult scheduling.

WT: Oh, not at all, not at all. Thank you.

[End]