SEC Historical Society
Interview with Sara Hanks
Conducted on February 4, 2008 by Kenneth Durr

KD: This is an interview with Sarah Hanks on February 4, 2008, conducted in Washington, D.C. by Kenneth Durr. I want to start by covering your background.

SH: Okay.

KD: I notice that you are from the United Kingdom, and that you received your education there.

SH: I did. The reason I ended up in Washington is that I always thought that I would do international securities law, although I had no idea what it was when I first started. I always thought that I would start out in London, and then maybe I would go to Hong Kong.

KD: 'Always' as in—

SH: Since I was seventeen years old. I had no idea what it was. It was like, "Moving money around the world. That sounds really good." But when I was at Oxford, I met an American serviceman. We thought that maybe he can work at NATO headquarters while I'm in London. The U.S. Army had other ideas. So, I took up articles—what was then called articles is now traineeship—with the law firm I had chosen, Norton Rose in London. At this point, we were married. We totally failed to get Lonnie, my husband, anywhere close to where I was. We didn't see each other for more than two weeks during the first two years of our marriage. He was sent to Arizona, then Korea, then Washington. So, towards the end of my traineeship, I realized it just wasn't going to work: me against the U.S. Army. I decided to move to the United States to find a job in international work. Actually, the date I decided to move was February 14th—it must have been 1983. Of course, in Washington, in the early 1980s, there wasn't very much international work.

I applied to a few of the major firms that I'd heard of from a few people in London who helped. There was this one guy from Rogers & Wells who was over in London negotiating a Eurobond. It wasn't a deal I was in, but one of my friends knew my interest, and said, "Here's my friend's resume. She wants to move to Washington." That guy and I had breakfast the next morning, and he offered me a job on the spot. That was John Liftin, who later went on to become General Counsel of Kidder, Peabody and The Bank of New York. And then he left, after I'd been at Rogers & Wells for about eighteen months, to take up a general counselship at a now defunct investment bank. All of the good international work that we had—just because of him—went back to the New York office of Rogers & Wells, and I was left there as a second-year associate, thinking, "well what do I do now?" John mentioned my name to Linda Quinn at the SEC, who said

"Come over for an interview." The rest is history. They offered me a job as an attorney fellow in the summer of 1986.

KD: What was your understanding of the SEC at that time? Had you had much experience?

SH: Yes, on the other side of it, of interpreting the rules, which I later went on rewrite - Release 4708 and the no-action letters that were based on that. I learned a lot from John Liftin. I only worked for him about two years at most, but I could see the people that he admired in the securities industry. I went to all of these conferences. When you looked at the resumes of all of the people who had knowledge and understanding, they'd all spent some time at the SEC. Everybody who was anybody had spent some time, apart from those in firms like Cravath, who just never leave. I could see the SEC's standing within the securities community was obviously very high. It was clear that's where you got the knowledge.

We went to the SEC trying to get a no-action letter. I was just very impressed by the staff's intellect. They were very different from private practice people, because private practice people were wearing fancy suits. Going into the SEC in the '80s, people were wearing short sleeves, rolled up. What they cared about most was the law, and not anything else. I was just very impressed with the organization from the outside.

KD: How about Linda Quinn?

SH: I had never met her before I went over for an interview. Once I met her—how could you not be inspired by someone like that? She was the big picture woman. She could step back and say, "That's the important thing." Being lawyers, we tend to get bogged down in the details. She was absolutely amazing at stepping back, and saying, "This is the important. This is how this pattern of laws works." So incredibly bright.

KD: The interesting thing here is that you were trained in the U.K. You were a solicitor and licensed to practice in the U.K.?

SH: Yes, I'm a solicitor.

KD: Here you are in this American institution that revolves around American securities law. What was that transition like? What kind of perspective did you bring?

SH: Getting in was interesting. I think I was the first foreigner ever to work for the SEC. They thought so as well. Then I hired the second foreigner.

At that time, I did not have U.S. citizenship, which I was only eligible for when I'd been here three years. I'd called the SEC when John Liftin left Rogers & Wells and asked, "Do you have to be a citizen?" They said, "Oh yes." But then, this other introduction to Linda opened up, and I let it go, because it was obvious, from my resume and the accent, that I wasn't American. As we got to the point of the offer, I talked to the personnel office, and said, “You realize I’m not American, right?” They said, “It’s all right. You’re members of NATO. So long as you can come and work here, that’s fine.”

We ran into problems when I tried to get an unpaid Dutch intern into the office a few years later. It was really quite a lot of fuss. These days, I see that there are people who are clearly not citizens. I don’t know if the rules have changed.

So, there were logistical problems. And then, of course, I sounded weird whenever I was on the phone. But the adjustment, intellectually, was really very easy. While Britain was a long way behind the U.S., and has been influenced by the U.S. in securities law, you take two democracies based on common law, with common cultural things, as far as business regulation is concerned, and you end up at pretty much the same place. To the Brits, it’s a national sport, criticizing the SEC. But they have followed the SEC down so many roads.

KD: Was disclosure central to the way that Britain was doing it?

SH: No. The whole disclosure-based regime is something in which the SEC has influenced the rest of the world. The concept of registration is different in the U.K. There are proxies for every sort of regulation. I didn’t find it any more difficult, I think, than moving from one state to another.

KD: What work were you set to do in the Division of Corporation Finance?

SH: I was an attorney fellow at first. The general idea was to take people who had experience on the outside. I only had eighteen months experience, but I did have fun and I did work hard, doing no-action responses at first. I worked for Bill Morley in the General Counsel’s Office, responding to no-action requests. In those days we couldn’t get typing time and we had no computers. We used to write these things out by hand. I had good handwriting, so that probably helped the analysis. That was a lot of fun, because you were able to take discrete areas and study them in-depth. That’s actually come back to haunt me in later years, because there’s a series of letters that I was involved in—in ’86, ’87—that my partners have seen my name on. They say, “Oh, you’re an expert in this area.” It’s something that I haven’t looked at for the last twenty-plus years. I’ve really got no knowledge about it. But at that point, I did learn a lot about some very discrete areas, and then was able to start putting those together. This is a time when we started working on 144A and Regulation S and the multi-jurisdictional disclosure system.

KD: Were these no-action letters, that you were working on, have to do with international companies?

SH: No, they were U.S firms. But everybody knew I went in with the view that I wanted to do international. It wasn’t until Carl Bodolus resigned that I moved over to the Office of International Corporate Finance, and became the head. After Carl resigned, Linda called me in, and said, you know, “How does this affect you?” I was still an attorney fellow, which had a finite term. I said, "I don't know." She said, "Don't be dumb. Do you want the job?" I said, "Oh, yes. That would be good."

KD: How long had the Office of International Corporate Finance been around?

SH: Carl was its first chief. He had actually joined the SEC the month I was born. So it was a passing of the torch. It had existed certainly as long as I'd been in the country. When I took over, I saw materials dating back to the '70s.

KD: What was the office's purview? What did it do?

SH: To do all of the weird international stuff. When Carl was head, there were two or three people at most in the office. When I went over there, we expanded it a lot, because we moved all of the international laws over there. As Paul Dudek still does, there is interpretation of the existing laws, working on current or new rules that affect international companies, the review of international companies' filings. All of those things are still done.

KD: What was the bulk of the work? Was it reviewing the filings?

SH: In Carl's time, yes, until we got into the rule writing. Then the rule writing took a large chunk of the office. That's one reason it expanded. Rule writing previously, there was not that much on international, was done in something like the Rule Writing Office. But then they moved all of the international stuff into the same office, and we went to six attorneys pretty quickly. That would have been '87, '88. I'm not clear on the dates.

KD: A landmark that shows up here is the 1987 Study on the Internationalization of the Securities Market.

SH: Yes. I moved offices after that. I worked on the study. And that's one of the reasons that I ended up in the International Office.

KD: What kind of work did you do on the study?

SH: Research. It was so difficult in those days just finding the people. Nowadays, you start off on the Internet. I'd helped work on the structure of the study and what it should cover. As it became obvious that we weren't able to get a lot of information, it became, "We won't say anything about that, because we can't find it for all of these other jurisdictions."

KD: Now, the study was broken up into offices or departments?

SH: Yes. I just did the Corporation Finance part. And then there was also coordinating with the other guys, like in Market Regulation.

KD: Was there much talk about the genesis of this study? Was this something that was really, in demand, or did it seem like a project that was going along by itself?

SH: I think there was a perceived need for new rules in so many different places, such as 15a6, and 144A. Maybe there was a perception that we'd lost some market ground with creating this offshore Eurobond market by reason of tax regulations.

KD: Your sense is that the U.S. created that Eurobond market?

SH: Yes. And so, trying to see what we could do to regain an institutional market that we had forced offshore. And then just a need for guidance in so many other areas, all of which turned out to be international, and all of which turned out to be linked in some way.

KD: How had we forced that market offshore?

SH: Tax regulations. I would have to go back, and sort of recreate that. It was not so much a securities thing. It was a tax-driven market that happened even before I got here to the States.

KD: So, if taxes drove this market away—

SH: How could securities bring it back? Because then there was a change in the tax laws in '84. It was right around the time I arrived in this country. At which point, you could have brought the markets back. But there was no real trading. And that's when people said, "We need an institutional trading market, like the one they have over there in Europe."

KD: Did you have any interface with the Senate or the House committees that had commissioned this in the first place?

SH: No, not really.

KD: Any other information you can give me about the process of working on that study?

SH: It was really like pulling teeth. One of the ways that we'd arranged it was around what they do about registration in other countries. Well, the problem is that you don't have the same concept of registration, so you've got to look for proxies. Or, what do you do to ensure that information gets into the public markets? So, the questions that we were asking of the people that we could find, and finding the people to ask the questions, was a big issue. We were constantly reframing the questions that we were asking to try to make it make sense in their own jurisdiction.

KD: That gets to what it sounds like must have been one of the fairly big activities, which is this whole idea of reconciliation. If an overseas offer wants to issue something here, they have to reconcile everything. Did your office help with that at all?

SH: We dealt with reconciliation on the financial side a lot. It was clear that that was always going to be an issue in the near future. This is when the SEC started playing a big role in IOSCO and the accounting committees. The problem was that at that point the SEC was, you could say, a bit parochial. But so many other financial systems were absolutely terrible – for example, the ability of Germany to smooth out earnings. German accounts at that time were very much aimed towards creditors. Creditors care about, "are you going to stay solvent," not, "can I see how your profits have grown year on year?" The ability to move money from slush accounts to smooth out your earnings was perfectly legitimate under German accounting rules at the time. I think Switzerland was the same. Many jurisdictions had the ability to have a line item for "convenient payments," i.e. bribery, so you could just put it down there in your financial statements. Most other people's financials really weren't very good at the time. And there was a lot of pressure even then from the Wall Street firms, "Can't we please trade in the United States without reconciliation?" There was at least one attempt to do that. It got nowhere, because the problem was the SEC's view was investor protection. If you're going to be listed on the U.S. exchanges, you can't have crappy financials.

KD: It sounds like investor protection is down on the list for foreign firms.

SH: It was at the time. Or it was a different type of investor. I mean you can look at the Germans, and say, creditors: absolutely protected. They know whether they'll get repaid. But long-term investors? Because these were also the days where there wasn't that much retail interest in securities. So everybody's financial systems were geared to a system in which the people who needed protecting were creditors. The stakeholders were seen as being employees, not so much individual investors, because they didn't have so many individual investors. The environment's changed hugely over the last twenty years.

KD: Where did you pick up this knowledge? Is this the kind of thing that you started to piece together?

SH: I spent some time in the library. It was like putting jigsaws together. I frequently went down to the library and had one of those "ah-hah" moments, where you go: Oh! So this is what a proxy statement is. Or stuff like that. It really was like finishing school at the SEC. It was a wonderful combination of being paid to learn. It was like doing a securities LL.M, and getting paid for it.

KD: Once you took over the office, you found three or four people. You didn't know how long it had been around, but I guess it must have had its ways. What were your priorities once you looked around and wanted to set this up as your own?

SH: Making a few things more efficient. In those days, everything was in three-ring binders. We weren't computerized at all. We got computers about 1986. But still, they were basically word processors. For example, little things like ADR filings, Form F-6; just having different ways of assigning the review of the Form F-6; creating a few new policies with respect to them. There were a couple of things that I'd done, where I'd sort of made a decision, and had this moment of panic, where I go: Oh God, you know, can I possibly be right? And then realizing: Well, since you say it, you are, in fact, right, by definition. This is the policy of the office. Nothing strategic at this point. That wouldn't really have been my job at that stage.

KD: Whose job would that have been?

SH: That would have been Linda Quinn and Elisse Walter. Moving the rule-making into that office was part of their strategy. The SEC was in the process of really engaging the outside world through IOSCO. When IOSCO started, it started as the organization of America securities entities. Carl used to go to it.

KD: Latin America.

SH: Latin America wasn't doing anything in those days. They didn't really have any markets. But there was a bit of training. Whereas, as IOSCO itself expanded, the SEC's role in it expanded. Linda and Elisse and the accounting staff played a much larger role in it as it expanded.

KD: Were they the ones who would go to the meetings?

SH: Yes. I used to go with Linda to several of them. We couldn't all afford to go overseas, but I would go to meetings in the U.S.

KD: What was that like? Were the representatives of the other countries paying a lot of attention to what the SEC said?

SH: Yes, because the SEC had the expertise and an infrastructure that nobody else had. The SEC had two thousand employees. Nobody else had anything like that. They didn't have the financial resources; they didn't have the institutional knowledge; they didn't have the principles. It was a sort of love/hate relationship. The U.S. has all the answers, but why do they have to be in charge of everything? But there was a lot of give and take.

KD: How much did the SEC listen then? Were there any "ah-hah" moments when you were sitting around with all these other folks, and you're saying: Oh, this is an interesting idea?

SH: I don't think so. And this is purely anecdotal, obviously, but in my experience, it was very much, "you know, here's an interesting problem, let's all discuss it. U.S., what do you do?" "This is how we do it." And everyone goes: "Oh, okay. Well, we could do it like that." A good example of that is the project of IOSCO whereby they instituted—it's sort of fallen into disuse now, because of course EU regulations have taken over the whole reporting and disclosure—but disclosure for ongoing reporting, and a continuous disclosure of obligations. What is now Form 20-F is based on what everybody agreed in IOSCO that we should have; which looked very much like the original 20-F. There were hardly any changes by the time—but we said: Okay, we're going to adopt the international version of this. I'm forever explaining to my associates why this form, and no other, uses the words "host country" and "home country." But basically, we took the 20-F, imposed it on the other countries, and then said: "Okay, well this is the result of that project, so here's the new 20-F, which looks like the old one." But that was sort of typical for those days, because nobody else had that sort of thing. And of course now, it's mostly irrelevant.

KD: There are some landmarks for IOSCO in the '80s and early '90s. What I'm hearing is that those would have generally been bringing something from the SEC, and batting it around a little bit, and then sending it out as an IOSCO policy.

SH: Yes.

KD: It gets to this idea of the Americans being the big bullies on the block, or having all the answers—and that is the SEC Technical Assistance Programs. Were you involved with those at all?

SH: Just a couple.

KD: In what way?

SH: I did some of the training where they brought the people over to Washington. I was involved in CONOSCO in Peru. I think that was them coming to the SEC, as opposed to the SEC going to them. But I was definitely involved in the "here's how we do it in the U.S." presentations.

KD: What was the mission behind it?

SH: From my point of view, which is very much at the peon level at that stage, it was these are people who have fewer resources, and we can teach them how we do it, how we allocated resources, how we choose to review things; so that you can piggyback and don't have to work those things out for yourself. Maybe to a certain extent, it's a bit of evangelizing. We believe that full disclosure is a really good thing, and you should consider this.

KD: When the Peruvians came in, did all of what you were telling them make sense? Was there a time when it seemed like it was not of any interest?

SH: It's difficult to tell. The bulk of my practice is actually in Latin America. There is some very good influence that the SEC has had on the whole of Latin America: the whole focus on disclosure, and the existence of a management's discussion and analysis. The problem was, in the '80s, it was part of the lost decade; so there just wasn't that much. If you actually had a lot of offerings happening in your area, this is what you might ask of them. So maybe some of the things that we said planted the seeds for later disclosure. You look now at the Mexicans and at the CVM in Brazil - huge amount of SEC influence there. Did that come directly from the SEC? But that would have been a long time ago, because Brazil was a total basket case at the time. Or did it come through the securities lawyers who impose indirectly their disclosure requirements on Brazilian disclosure through the use of their 10b-5 opinions? It's all part of a package. The SEC influenced us, who are now partners practicing in that area; and we influenced the CVM.

KD: I guess the Technical Assistance Programs might not rank terribly high, if you had to judge.

SH: I think that's true. If you look at the last four years in Brazil, two things coincided - Brazil returned to being a normal economic country, and stopped having hyper inflation, and also instituted a whole new equity capital markets regulation, Article 400, which is hugely influenced by the SEC disclosure concepts. Because the Brazilian securities markets aren't big enough to absorb very large offerings, all offerings have to be made locally in Brazil, listed there in Brazil, go through the CVM process, and also have to be made in the U.S. That means you're using 144A. That means you're using U.S. securities lawyers. U.S. securities lawyers will impose the things they learned from the SEC on a Brazilian offering. Take Brazilian bank offerings, for example. There is nothing in Brazilian securities law that says banks have to follow the SEC's Guide 3. Every single one of them has Guide 3 information in there. So, you've got this whole indirect influence. But it's coming from the lawyers.

KD: Do you recall where this SEC Technical Assistance Program was being operated from?

SH: No.

KD: There was an Office of International Affairs.

SH: Yes, that was headed by Michael Mann. It did more enforcement, and a lot of coordination with the regulatory authorities. We used to all meet on a weekly basis, especially Corp Fin, Market Reg, and Enforcement, just coordinating what we were doing.

KD: Was there an international component to Market Reg too?

SH: Yes. I saw Bob Colby lot in those days. I think he's still there. The whole 15a-6, and when you can offer research into the United States.

KD: Let's start to get to the big subjects here. You've discussed it a bit, the idea that some new rules were going to have to be written. Did this come out of the '87 study?

SH: The '87 study identified areas where regulation was needed: Easier re-sales of restricted securities, which had both domestic and international elements; clearer jurisdictional guidelines, as to what was in the U.S., and what was outside the U.S.; and more reciprocity on the disclosure front. All of those, however, pre-existed. I came over knowing that they were working on the international rules. I joined the SEC right at the beginning of October 1986, and had been talking to them through the summer. Linda knew that she was going to be working on these things. I think maybe it wasn't quite so obvious at that stage that 144A was, in fact, an international thing more than a domestic thing. But what later became Regulation S: clearly she knew she needed that. They had no-action letters, literally, three feet deep at this stage; and it was just getting ridiculous—using far too many resources.

KD: For everybody who wanted to do an issue in the U.S., you had to give them a no-action letter.

SH: Anyone who had jurisdictional links to the U.S. who wanted to do something outside the U.S., you had to go and get your own letter. And if you wanted to rely on someone else's letter, you had to be quite sure that there was absolutely no difference between you and them. There were a couple of landmark letters that said: this can be used, or you can have this contact. But the whole thing was just getting too complex. So she knew she needed new rules in that area.

KD: You've mentioned some landmark letters.

SH: Yes, now I can't remember what they were.

KD: There was something having to do with Exxon Capital?

SH: Exxon Capital is slightly different though, because those are slightly later, and those are still actually relevant. The ones that were most important in the Reg S area must be cited in the '87 Study. Yes, there was, on debt. The international equity markets were a very recent phenomenon at that stage. The debt markets were fairly internationalized; you'd created the Euro markets over in Europe, you had this sort of institutional market floating somewhere off Europe, in some ill-defined way. But the equity capital markets were very localized and regional, until around 1984, 1985. And the reasons for that were, you got the big privatizations of the Thatcher era, for example, where you had these enormous offerings, which the local markets couldn't cope with; and you knew you wanted to come over to the U.S. markets, the biggest, deepest ones. And that's where things started to get complex. Can we offer in the United States? Do we register? If we don't want to register, if we just want to sell both in the U.K., but in France, and Sweden, and all of these places. So you're starting to create international links for which there were no rules. So the study was done at a very opportune moment, I think, because you're looking at markets that are probably no more than five years old at that stage.

KD: I mean, there was a rule, wasn't there, in that they could take and reconcile it to American accounting, for instance?

SH: Yes. If you wanted to do the whole registration, you could do that. But, for example, reconciling British Gas is just not going to work. In those days, the U.S. was the biggest and deepest market. The Europeans were all very fragmented.

KD: How did the push for the rule writing go? You said that there were some things in the works when you came in. Do you remember what was first?

SH: 144A was first. It was being worked on, at that time, by the regular rule-writing guys. And it was at that point seen very much as "we need to give more guidance on the re-sale of restricted securities." At that point, the industry was operating under "4(1 ½)," which didn't, of course, exist; it had been created by the industry. So there was a clear need for a rule that said under what circumstances I can re-sell securities in a private way. Do I need all of the opinions and things that we're getting at the moment? So, there was no liquid way of re-selling restricted securities, even to institutions, at that stage.

KD: What's this 4(1 ½)?

SH: Yes, 4(1 ½). Section 4(1) says re-sales by anyone other than issuer, underwriter, or dealer are exempt. And Section 4(2) says private placements are exempt. And so when you try and put them together, you go: Under 4(1), I know I'm not the issuer, because I'm re-selling. I'm not a dealer. How do I know I'm not an underwriter, because statutory underwriter under 2(11) is so broadly drafted. I'm going to look to Section 4(2) for guidance as to how not to be an underwriter. You put the two together, and you get Section 4(1 ½). And it worked. Everybody was fine on the point of view; we can give opinions on it. But if I'm an institutional investor and I want to sell to another institutional investor, I had to get a rep letter, and I had to get an opinion of counsel, and then I'd transfer it—which meant that this was a very illiquid market, especially when you compared it to what was happening in the Euro markets. So, there was a need for liquidity.

KD: The restriction was that it had to be unsold for two years. Is that right?

SH: Two years was for the public markets. That was 144. 144A piggybacked on it. Whereas 144 was the public re-sale of restricted securities, 144A was the private re-sale of restricted securities. They'd already been working on that for a while when I joined the Commission.

KD: 144A was already in existence.

SH: It was in process. I think they started working on it at least a year before October 1986.

KD: What was your role in that effort?

SH: I got assigned to be part of the team, thinking about and writing about it. My role was more on what later became Reg S, which was sort of like Regulation 4708. The release upon which all of the existing no-action letters was based was Release 33-4708. So, we were working on the successor to that release. We knew that we had to do the two in tandem, because it gradually became more obvious that the two would work together. And that Regulation S, in telling you how you did an offering offshore, would sort of come—I remember the moment that I realized that 144A had wider implications, because I had just gone out to buy my husband a birthday present, and I was coming back, going: Oh, my goodness. This is broader than I realized. And I went back to Elisse Walter, and she said, "Yes, yes. That is the general idea." But if you create an institutional market that is liquid—which we, at first, were just thinking: Let's find a way for these poor guys to be able to re-sell without all these and bits of paper and opinions passing. If you create a liquid market there, you're actually creating an institutional market that could be like the Euro markets. So you're almost bringing the Euro markets offshore. And then, at some point, you start realizing that these things do go in tandem, because Regulation S tells you how to do an offering that is offshore, and not registered with the SEC; 144A tells you how to eventually re-sell securities that are placed in a restricted way in the U.S. Therefore, if you go into an offering knowing you're going to use 144A eventually, you have what is called a 144A offering. So, this how to do an unregistered offering. Eventually we just realized that the two things worked together.

KD: They're two parts of the same process. And the idea is simply making American markets more attractive, more available?

SH: Yes. Providing clarity in an area where there really wasn't a lot of clarity. Because you didn't know how you could stay safe from registration if you sold overseas, and you wanted to have some idea of how you could re-sell if you placed the securities privately in the U.S.

KD: You ended up focusing more on the Reg S side of this?

SH: I started off more on the Reg S side, but as it became obvious that the two worked together, that they would be a package…. And then, because I had started working on the rules before I moved over to OICF, at some point, both of those rules ended up in OICF.

KD: What were the hurdles? What was tough about writing these rules?

SH: I used to work till midnight on Saturdays with this stuff. In some ways, it was very simple. But the problem is that we weren't doing these in a vacuum. So it had to fit in; not only did the two rules have to work together, but they had to work with other rules outside of themselves. I know Reg S can be, and is, criticized for being far too complex. The problem is that it was very difficult to find a bright line. We wanted to say, if you're selling outside the United States, you don't have to register with the SEC, period. The trouble is, what is outside the United States? If you have some kind of jurisdiction or link: you know, one phone call, six phone calls—what happens if you advertise? Luckily the Internet didn't exist then, but it would be the same kind of things. And there were a lot of communications that were trans-national by their nature. We had the basic principle: You sell outside the United States. And we had rejected the old principle of: If you sell to U.S. persons. As far as we were concerned, all persons in the United States were protected, whether they're U.S. or foreign. If a U.S. person is outside the U.S., they are not going to be protected. They're not going to take the registration provisions of Section 5 around the world with them, like an umbrella. And so it was to protect the U.S. markets, not to protect U.S. investors wherever they might wander.

KD: So you're almost looking at geography, and saying: Here's where it all changes.

SH: Very much. And in the changing environment that we were dealing with, that seemed very appropriate. We were getting new securities commissions all the time in other countries. And a lot of people were saying: Hang on a bit. You cannot regulate this stuff that your people are doing in our markets. We regulate that. You regulate this. So, basic principles were: Registration provisions are intended to protect U.S. markets, not U.S. persons; registration provisions are different than anti-fraud—never gave up, for a moment, the concept that fraud, where it happens, we're going to take jurisdiction over it. The basic principle was that you needed bright lines, so a company knew exactly what it could do to whom, and when. And then just putting all of those concepts together. So, the concepts, I think, there was very little disagreement on; it's just how you managed to reflect those concepts in a rule.

KD: There's really only three concepts.

SH: Those were the primary ones. Everything else flows from those.

KD: How much was the Commission involved in all of this?

SH: A fair amount. We did run the rules by all of the Commissioners. They saw many, many drafts of these things. Joe Grundfest: very highly involved. Joe—the funniest Democrat I ever saw, a Chicago School Democrat—absolutely brilliant guy. I loved him. But our first draft we'd sent up to him, and his assistant Bernie Black—now Professor Bernie Black—came down with our rule, mostly crossed out. He only left the bit that said what became the general principle: securities sold outside the United States are not subject to registration. They'd crossed out absolutely everything else. And so we had to work from that. He wanted to be a sort of free market libertarian there. But, in the end we got to a place where all of the rest, however complicated it looks, it's just a way of saying what is inside or outside the United States.

I used to tell this joke at conferences, what the basic problems were. A bunch of French widows and orphans have boarded a plane in Wales, and they're flying to Iran. And en route, they get hijacked. And the hijacker says, "Fly me to Cuba." But they run out of gas somewhere in Houston, so they land in Texas. And at that point, there's an Iranian rug dealer who turns to one of the widows and orphans, and says, "Hey, you want to buy some securities?" Okay, did that happen in the U.S. or not? He makes the offer when they're outside of U.S. airspace. The offer is accepted just as they're taking off and heading for Mexico. You have no idea. I mean, you know, you take your basic contract laws for where an offer and sale takes place. And when you've got telephones, and people moving around, you have no idea. So, you just provide some absolute clarity, and say: at this moment in time, which is when the contract is accepted—the order is transmitted, that's the point we're looking at. We're going to look at nothing else. And yes, you can play with this. You can manipulate this. That's the whole point. We are providing a bright line here. And so if you want to go offshore specifically to transmit your buy order, then you're doing so knowing that you're leaving behind the protections of Section 5. And that's fine; you do so on the basis of full knowledge. Fraud involved: all bets are off; we don't care where it happened. But here, you know exactly what the rules are, because it's so difficult to draw the line so we're drawing it here.

KD: The other thing that stands out in all of this is: I guess it's in 144A, which is—you know, the fact that you're ruling out the widows and orphans. They're not the ones who are buying.

SH: Yes. Widows and orphans, of course, if they choose, could go to Paris and buy hokey securities. But they would be doing so on the basis of full knowledge, we hope. 144A: the principle is there are some people who, by definition, just do not need the protection of the securities laws. And so why use all of these resources of the SEC in giving people something they don't need? And so when you look at Linda's speeches from this time—she used the phrase—which I hate—"as a per se matter." But still, qualified institutional buyers, per se, do not need the protections of registration. And that's just it. There's a 1987 speech where these principles are set out. And that was one of the crucial moments in international regulatory history.

KD: Was this controversial at all? Because, in a sense, the SEC is backing away from something—theoretical or not—that it used to do.

SH: Yes. In fact the board members of one of the securities regulatory magazines, maybe it was BNA, met. And we had gone over to give them the outline of what we were doing. And I forget who it was, it was somebody important like Joe McLaughlin—somebody had this moment of banging the table, and saying, "This is voodoo regulation." Using the voodoo economy thing from the Reagan days. Yes. There was some resistance. Not from the banks—and here again, all of this is just from my own experience; but there was some resistance from lawyers. There were questions asked from Congress, I think, but I don't know how they were answered. I wasn't involved in that bit. I appeared on a radio program at one stage, one of these financial ones, where the host said, "Well, how can you justify taking this opportunity away from the widows and orphans?"

KD: So, that's turning it the other way.

SH: Yes, exactly. Widows and orphans should have this opportunity. So I had to backtrack on that one, say: "Well, okay. Here's the basic principle." 144A was controversial in some respects. Reg S, I just didn't see that; because I think it was just too damn complicated anyway. And everybody was like: Oh yes, that's foreign. We don't care about that. It's just too complicated. But the resistance did exist in regards to 144A.

KD: Was there controversy within the Commission?

SH: I don't think so. Not that I was aware of. I think people wanted to do two things, which is provide certainty to when you could re-sell, and have a more liquid market. There was discussion of where we should set the levels.

KD: You ultimately came up with a dollar amount.

SH: It was the easiest thing to do. Again, you've got to set the line somewhere. The general idea was, let's just assume that somebody who's managing that amount of money cannot possibly be so dumb they need us to protect them.

KD: These things all came to fruition about the time you were getting ready leave the Commission.

SH: I stayed on, in fact, in order to get them through. We proposed them—and they went as a package, generally—we proposed them in '88, re-proposed in '89. At this stage—and this brings me back to the beginning of my story—my husband, working for the Army, has in the meantime gone back and served in Korea for a year, which meant that working until midnight on Saturdays was really not a problem. But he had come back, and he had just been assigned to West Point, to teach. At this stage, it was very difficult being that far apart. At least we were in the same time zone, but we could only see each other weekends. On two government salaries, we had to wait until the late train, eight PM Fridays and eight PM Sundays—tore the hell out of the weekend. So I said: I've got to go. I would have stayed at the SEC forever, if it had not been for that—or at least the foreseeable future. I loved the job. I described it, in fact, in my departure speech, as a blessing. You get up every day, knowing I'm going to do something really interesting. It's kind of significant too. It matters. I just loved it. I was learning things all the time. The people were fantastic. People just don't realize the quality of the people at the SEC, and the fact that you get this quality of people at government salaries, when they could be making—in those days, it was twice as much; now, it's a stupendous order of magnitude—it's like ten times as much, that some of these people could get outside. And yet they stay. Partly, there's a bit of lifestyle, although they do work hard. But it's because, they're doing something interesting and important. You don't necessarily get that everywhere else. I would have stayed; but it was just too much strain on finances and emotionally, being away so much from my husband. I stayed through the final adoption. I left the day that we delivered the adopting releases to the commissioners. At the adopting meeting ten days later, I was actually on the other side.

KD: And this was the adopting of Reg S?

SH: And 144A.

KD: At the same time.

SH: Yes—once we realized how they worked, they went together as a package.

KD: That draws a nice little line with your career at the SEC. And then you came back to the same firm, only in New York?

SH: Yes, strangely enough. I'd left it because there wasn't any international work. I knew a lot of the Wall Street firms at this stage, but the most interesting offer I got was from my old firm, which basically said: we don't do any international at the moment, but we're going to build an international practice around you. Going in as the number six person in one of the established firms—I was still very young then; and it's like: this is a chance to build something. It was a challenge.

KD: Did you get a chance to choose your successor at the SEC?

SH: Yes, to a certain extent. I was involved in that. Brent Taylor had been my deputy. And then I'd met a lot with Rich Kosnick as he considered whether to come over. Rich was technically the chief, but Brent was more than a deputy.

KD: Did you have a sense of what they might be facing? Of what the next thing coming up was going to be?

SH: There were a few projects that were left undone, some of which took a long time to get through. Rule 801—the cross jurisdiction exchange rights and tender offers—I had worked on; and I don't think it got adopted until about eight years after I left. There was a lot of interpretation to be done; because of course once you've got the rules out there, you've got to decide: what are you going to do about those rules now? But the reason I could say I will just get these done is because it seemed like that part of life had been done, at that point.

KD: And the size of the office when you left?

SH: It was probably still six people. And then it went down.

KD: It really did grow to do this very specific task.

SH: Yes, it was like a World War II Pentagon kind of thing.

KD: As you said, you're on the other side all of a sudden. And the newspapers and the financial reporters are coming to you to talk about Reg S and144A. All the talk is about this big new market that's going to do amazing things.

SH: Yes.

KD: It apparently didn't, for a while.

SH: It didn't for a while. Although one of the entities that worked very closely with the SEC through the whole of 144A, because they thought they saw the interest in it, was First Boston—later taken over by Credit Suisse. Did the market not happen? The trading market didn't. But the offerings actually did. These coincidences that happen in securities law history: at that time, early '90s, you've got Latin America re-emerging from the lost decade, and some securities offerings from Latin America. Now, of course, when we were at the SEC, we thought 144A was going to be used by domestic companies. We thought disclosure would be very much "okay, we're already registered, here's back of the envelope disclosure; we're AAA rated; this is the terms, do you want the securities?" And of course, one of the important things about 144A: it is disclosure neutral. It doesn't say anything about disclosure being necessary. So you see a kind of very interesting phenomenon here, in that people had said: there will be a race to the bottom. And again, the role that is played by the lawyers, in the need for 10b-5 opinions—you've got securities coming from unknown countries: Mexico, Brazil, Colombia. Oh my goodness, who are these people? And the investors won't buy unless they get the full story about the securities. The investment banks' internal risk management people say they're not going to permit these things into the United States unless they have a 10b-5 opinion from proper lawyers. And so, 144A offering documents that started to come from Latin America and other jurisdictions looked an awful lot like SEC registrations, with the exception of reconciliation and occasionally some of the compensation information. But in order to give the 10b-5s, the lawyer's going to go: I'm going to follow the SEC's rules. And that became the absolute standard, very fast, for disclosure.

KD: But you had the 144A document.

SH: Yes, the 144A offering document—you could not tell the difference between a 144A offering document and an SEC registered document, apart from the lack of reconciliation. I don't know about the domestic side; but the first 144As, at least on the international side, was Atlas Copco or Huhtamaki Oy; but they were both brought to market by First Boston.

KD: Another thing that came up was this loophole that allowed offshore offers to re-sell, and shift things back.

SH: That's on the Reg S side. It's interesting whether you'd call it a loophole. It certainly led to unintended consequences. That didn't become obvious till the mid-90s, where the rules as they applied then to a U.S. company selling overseas meant that you only had to keep the things offshore for forty days, and then they could come back. And that started to be used to, quote, "wash the restrictions off the restricted securities." So, in effect, some of these ended up as being indirect public offerings in the United States. And that was closed. I don't think there were really as many as everybody said there were.

You didn't really need to make these into restricted securities. Maybe the SEC was righter than we thought. But the market did calm down after that. And what people started doing instead was PIPEs. I'm not sure that that was better than the Reg S offerings.

KD: PIPES?

SH: Private investments in public entities, which the SEC has never liked very much.

KD: Why not?

SH: You're taking a public company, and you're giving a potential investor a much better deal than the public investors, basically. It's a very sound principle. It shouldn't really happen.

KD: You came back into private practice—or into the firm in New York. What kind of work did you get involved in at that point?

SH: The rules that I'd been working on. It worked exactly to plan in that respect. I worked only on the depository side, not the underwriter's side, on the first 144As. I did ADRs for Citibank. I did 144A offerings. I did Reg S offerings, eventually did a few registered offerings. Very much the flip side of what I'd been regulating.

KD: Given that perspective, was there ever a time when you said: I shouldn't have done that; I should have written that differently?

SH: Occasionally. The one that I disliked most—and still dislike—is one of the aspects of 144A that says: You shall not re-sell within forty days after—this is category 2 and 3. I didn't like it when we were drafting it as a committee. Sam Wolfe, who was my deputy at the SEC, and I were the ones who did the bulk of the work, supported by the other people in the office. But we were the ones who were there, eating pizza at Saturday night. And we never quite liked the way that—and that's what led to the loophole, as well. It seemed that you were saying: "at Time X, this shall not have happened for forty days thereafter." And it was this whole sort of time machine thing. It could have been better drafted. We lost the argument on that, but we thought that it should be: You shall institute restrictions providing that X might happen.

KD: Who did you lose the argument to?

SH: The front office. I forget who it was in the front office, but we lost it. These things are very much drafted by committee.

KD: The front office being Linda Quinn?

SH: Linda and Elisse. It was fantastic to work with them. Linda - absolutely unsurpassed vision of overview. Elisse Walter - the best drafter. My drafting improved so much, working with her. But, with so many people putting in their thoughts, there were things that it would have been better if they'd been more uniform.

KD: It's interesting that you talked about the fact that at the time that you left, you had about six people, and the office got smaller again after that. The interesting thing is this perception that with the internationalization of the market, the international focus is going to be continually growing.

SH: I think part of it's just because you no longer needed to just ghettoize the international bits. There's international aspects to everything. Of course, we had Sarbanes-Oxley in the meantime, which has screwed everything up. But you look at the increase. I'm pretty sure that there's something like twelve hundred and fifty—I don't know the number—there are a lot more foreign registrants now than there were when I was there. So you'd think maybe you'd need more people. But really, the office that Paul Dudek heads now is more coordinating, and just staying on top, and seeing where relief is needed. You don't need to have a separate international section, because everything's international, every offering. In my day, you'd do offerings that were purely U.S., that's it. And now, of course, all of the banks are international, so you're not going to be able to say: Well, Merrill Lynch can only sell in this area. Of course, everybody will say they want a bit sold in their markets too. So, growing international means less need for an international office.

KD: And when do you think that reached the tipping point, where the SEC is no longer just U.S., that everything's international?

SH: I don't know, because it's reversed. That's the problem with Sarbanes-Oxley. And it's been very sad. I know that it's good that there be competition between markets. And now, the markets that are primarily running the disclosure of many of these companies are very well-run markets. But it's just sad to see someone like British Airways, who was listed here and reporting here, not reporting anymore. Then there's no reason that that should be a necessary thing. It's just the U.S. used to be the center of the international world, and it's not now. And that's not going to change.

KD: The whole idea of Sarbanes-Oxley gets to something that's interesting. When you look at the discussions that were going on back in the late '80s they were really around "how can we reduce the amount of information that issuers have to put out?" And from the perspective of Enron, and all of that—that seems somehow quaint or curious. And I'm wondering if that ever came up at that time? The sense that: "Oh, maybe we took a wrong step."

SH: With respect to lessening information?

KD: Yes, with respect to making it easier to issue securities.

SH: Making it easier doesn't necessarily mean there's less information though. That's one of the really interesting things. A lot of the criticism was where people were going: "Oh no! It's a race to the bottom." But there never was a race to the bottom. There was a race to the top. And what happened was that those markets that provided the best disclosure routinely got the best prices. I've spoken in a number of accounting conferences, and there's a lot of learning in the finance journals about the effect that good disclosure regulations have on stock price; because if you have a more transparent system, you're able to assign a higher value to a security, because you don't have to discount the risk for the unknown. And so, I think the markets actually proved all of the naysayers wrong when they said it was a race to the bottom. There never was a race to the bottom. Disclosure has only improved on a worldwide basis. When you look at 144A: nothing in there about disclosure. You look at a 144A offering document: you've got some of the best disclosure in the world. You look at the markets in 1980s, look at an offering document for the Eurobonds: no management's discussion and analysis. You look at what you have now in the regulated markets in the European Union: you've got it. It's not as good as the one that you would do in the U.S. Nobody does good MD&As, apart from the U.S., I think—even to this day. But they've got them. They've got the idea that you've got to have more disclosure. A lot of this happened without mandating extra disclosure. And then, you look at Sarbanes-Oxley, and you've got the reverse effect going. Sarbanes-Oxley says: More, more, more, more, more—to the point that the companies say: "No more; we're out of here." And it's just a shame.

KD: So how has that changed the business that you're doing now?

SH: I hardly ever work on European public offerings in this country. I think those days are really over. We're only going to see the very, very largest companies from Europe coming here, for tactical reasons: maybe they want to take over something over here, maybe they want more of a presence here. If they have a huge employee base here—those are the things that might cause them to come back. But it's not going to happen very much.

KD: But it's just too much work for them to get involved?

SH: Yes. And there's no extra bang for the buck now, because they've got the quality markets at home. So they're not going to increase their stock price by becoming more transparent, because they're already as transparent as the markets require. So whereas I used to do some European offerings: not now. I do a lot of 144A, Reg S for Latin American companies. And about one in ten of those so far has eventually come to register with the SEC. I'm working on an enormous one at the moment. And it's typical of that: it's too big for its own market. It's got to go somewhere else. And the U.S. is the natural place. Sarbanes-Oxley has been a pain. They've been working on this registration for five years. But, Latin Americans will come to the New York Stock Exchange and the SEC. The Europeans, I think, we've seen the end of. It's a shame.

KD: Is there anything that we haven't discussed that is germane? Issues about your time at the SEC? Things you learned?

SH: Not really. I think the most important thing was it was a fantastic place to work. The people: Linda, and Elisse; Mauri Osheroff who's still there—actually. Elisse may go back there as a Commissioner, rumors say. Sam Wolfe, my deputy. The quality of the people, and the willingness to work hard, and the amount that you learn. Every associate who's ever asked about going to the SEC, I've always said, "You can't do better." If you care about the law, then that's the place to go. And you notice it with associates coming out of the SEC, who just have so much better grounding in black letter law. An associate who's a sixth year, who's been in private practice the whole of their life: they'll be really good at process, they'll be really good at negotiating and arguing—not going to be as good as somebody who's spent a couple of years at the SEC, learning the law.

KD: So you'd probably rather work with someone who's been through the SEC.

SH: I want someone who's got balance, yes. Because, occasionally it does actually matter that you know U.S. securities laws. I occasionally say that it's not rocket science, but it's incredibly complex and rule-based, and incredibly illogical. You wouldn't have done this from scratch. You would have built a totally different system. You've got things piled up on top of each other like Rube Goldberg structures. But it works. And there is a unifying whole. But you've got to know the rules, to know where you can push the envelope, as it were.