

Securities and Exchange Commission Historical Society
Interview with Don Weeden
Conducted on November 4, 2010, by Kenneth Durr

KD: Interview with Don Weeden, November 4th, 2010, in Danbury, Connecticut, by Kenneth Durr. Let's start at the beginning. You came into a family where securities was the business. You ended up going to Stanford, I guess.

DW: That's right.

KD: Did you know when you went to college that you were going to get back into the family business?

DW: After high school, I spent some time in our San Francisco office, and then, while at Stanford, I came back to New York every summer and worked in our office there. And when I went into the service, it was in the back of my mind that I was going to end up working at Weeden & Company.

KD: You went into the Air Force, right?

DW: Yes.

KD: What did you do?

DW: I became a pilot. When the Korean War started I was in the South Atlantic working on a Norwegian freighter. I had become frustrated at Stanford and had decided to see the world, which I did. Upon signing off in Baltimore I went back to finish at Stanford. I also signed up for the air cadet program and then, after graduation, I went to Yale Law School for about four months while I was waiting for them to call me. I spent the next four years flying, mostly in Germany. We had brand new all-weather interceptor aircraft to fly, and the combination of doing that and seeing Europe was a terrific experience.

KD: Did you fly Sabre jets?

DW: I went through the Sabre jet program at Nellis, in Las Vegas. The war was winding down just as we finished our training so I ended up going to Germany.

KD: Then, was it into the family business, after that?

DW: There was six months between my discharge in Germany and joining the family business in New York. I had married in the meantime and the two of us spent the time travelling by car through the Middle East.

My first job was in the back office where I learned how to deliver bonds and how to check stock certificates, something which isn't done now, and which my father felt was very important, especially for me. Weeden was very focused on the importance of the back office. We had to be because, as a dealer, we did things at risk. Our spreads were

narrow, leaving little in the way of gross profit. Keeping costs as low as possible was very important. Both my father, Frank, and my brother, Jack, were both curious and innovative in how to be more efficient in the back office, which was unusual for Wall Street principals at that time. Most partners were only focused on the front office. They were interested in being salesmen, bankers, dealers or underwriters.

KD: Why did you have the focus on the back office?

DW: I think it was just an instinctive interest on the part of my father and brother, all of us in the firm actually, that we had to be more efficient than others being a dealer, and then as a third market maker. The third market business is a special subset of dealing where the primary market was on a stock exchange.

KD: Give me the broker/dealer differentiation, then, that you're implicitly making here.

DW: First of all, a dealer has an arm's length relationship with his customers. He makes a market based upon his inventory and his interest in a particular security. He is willing to buy or sell into his own inventory, and take the risk that his decision will result in profitability when he undoes his position. Whereas, a broker takes no capital risk. He works, as agent, for a commission. His risk is his overhead.

It's a fundamental difference. Weeden was primarily a bond house. We were dealing in California municipal bonds. And then we found that there was a national interest in these

bonds. That's why we opened an office in New York, in 1927, and also Los Angeles the same year.

KD: The company started in 1922, right?

DW: Yes, that's right.

KD: When did you get into industrial securities?

DW: That's a little vague. The first thing that we did was to begin making markets in utility preferred stocks, primarily of those companies located in California -- Southern California Edison, Pacific Gas and Electric. At that time those securities were listed on the New York and they had off-Exchange trading privileges because there was not enough activity to create an auction market. That was also the experience with corporate, municipal and treasury bonds going back to the teens.

As the institutions became more dominant in the buying and selling of corporate and municipal and treasury bonds, it became a negotiated market between the upstairs dealers and the institution. And so, there was a trend that had already established itself, even before the third market gained its notoriety, so to speak.

KD: Right. But this is a trend in bonds. And, it seems like the New York Stock Exchange really went into stocks and left bonds alone, to a great degree.

DW: That's right, because the public was more interested in stocks, and those were the securities that had greater volatility and activity. They were the securities that member firms, and their brokers, found more interesting and were easily traded in an auction market environment. Small transactions, odd lots, were quite a large percentage of activity back then. Anyway, it was in the early thirties that we first got involved in preferred stocks.

And then, in the late thirties, the Public Utility Holding Company Act came along, and these holding companies had to sell many of their operating companies and consolidate geographically, so these securities became available and were acquired by insurance companies and bank trust departments.

Because our customers were entirely institutional, we followed their interest. And when they became interested in preferreds, and then utility common stocks, it was a natural thing for us to make markets in them. Now, a lot of those utility stocks were also listed on the New York and the policy of the New York Stock Exchange was to hand out these stocks to different specialists, so that a specialist didn't end up concentrating on utility common stocks. He had industrial stocks of various sorts, and maybe one or two utilities. And so, his understanding of the utility market in general, what was going on from a regulatory standpoint, the trends and so forth, were not well known to him.

Also, the specialist was precluded from having any contact with the institutional buyer who had to go through a member broker. And the activity was not small odd lots and round lots, but blocks of larger size, and the trades were infrequent, It didn't suit his interest to improve on and facilitate a continuous auction market process. And so, these stocks tended to go off the Exchange.

This trend was accepted by the Exchange, because the specialists had little interest in them. It was okay for firms like Blyth & Company and First Boston Corporation, neither of which were members of the Exchange, to trade these stocks away from the floor. In fact, the Exchange cooperated with the investment bankers who used their members when effecting large secondary distributions.

K D: So, when you came in in '56 or so, how much of your company's business was still in that area of bonds or municipal-related securities?

DW: Oh, most of it was in that area. I think that in the early fifties, we probably made markets in no more than sixty utility common stocks, At that time, we did business with some New York Stock Exchange brokers who felt perfectly comfortable in coming to us. And the specialist was perfectly comfortable in having them come. For instance, Kansas City Power and Light might not trade for a couple of days, and Lazard Frères had 1800 shares to sell. The specialist really had no interest in taking on those 1800 shares. That was not his role. And, he understood that, and to have somebody else buy them was just fine with him.

KD: When, or more importantly why, did you start moving into industrials then, the kinds of things that specialists might have been interested in trading?

DW: Again, it was our customers who encouraged us to do that. I use the example in my Book (available on Amazon) of Old Colony Trust, which was the trust department of First National Bank of Boston. They came to us and said, "You know, we have trust accounts where we're buying and selling small amounts of Standard Oil of New Jersey. And we don't need a broker. We don't need his advice. We don't need any research in order to make the decision of what we want to do."

KD: And to pay that commission.

DW: And to pay a commission, The markets that we made, on average, saved them about half the commission. It varied. Sometimes, if we were an aggressive seller, we would save them the full commission. Sometimes, we would not save them much at all, but we would provide the 500 or 1,000 shares they were looking for at that price.

KD: When did you start to see a little concern, or push back, from the New York Stock Exchange?

DW: It was in the late forties, when Blyth & Company, who was basically an investment banker but did a lot of market making in utility stocks, decided to do the same thing.

Blyth was a little bit different than we, because they quite often relied upon the New York Stock Exchange member-firm brokerage community to distribute large blocks of utility stocks,

When they started making markets – and you might say this is hearsay evidence, but, we knew that they had been approached by the New York who said, "Hey, we don't mind you trading our utilities, but our member firms, the fellows on the floor, are not happy with you getting involved in industrial common stocks, which are their bread and butter." And so, Blyth stopped doing it. It might have been that they just lost money doing it. I don't know. But, I'm pretty sure that I have it right.

KD: How about your company?

DW: Well, we had no strong relationship with the member firms, except the occasional one that I talked to you about. We had a very strong relationship with non-member broker/dealers all over the country. There were about 4,000 of them, at that time. Their customers were also interested in equities, in growth. There was a positive feeling after the War that equities were the thing to buy, as opposed to bonds. And their customers came to them and said, "We would like to buy Standard Oil of New Jersey." Well, the non-member broker dealer said, "Unfortunately, I don't make anything on that, because, for me to get 100 shares on the NYSE, I have to go through a member, who has to charge me the full commission."

So, when we sold him 100 shares at the opening, plus a quarter of a point, and he could turn around and sell it at the opening, plus the full commission, he could make maybe 40 percent of the normal commission. Which was much better than his going to Merrill Lynch, and saying, "Merrill Lynch, could you do something for me someplace else at some time in the future."

And so, we did a lot of business. We didn't mind doing the odd lots and the small round lots. And, of course, odd lots, at that time, if they traded over \$20 a share, had an odd lot differential of a quarter of a point. If we did something a quarter of a point over the last sale, the non-member broker dealer could turn around and charge the full commission. And he was delighted.

In fact, many of them said, "You know, if it had not been for Weeden, and A.W. Benkert and New York Hanseatic and a couple of others, who provided this over-the-counter market, we might have gone out of business". And so, that was part of our business. The other part was the part of making markets for the institutions who felt that they had no obligation to any member, in terms of buying or selling a particular block of stock. And, when we talk about a block, the block would be as small as 500 or 1,000 shares.

A good example was the Minnesota Pension Fund. Back then they were buying lots of 500, 1,000, 2,000 shares of various utility stocks, and they utilized the third market. That was before anybody called it the third market. They would come after the close to four of us, American Securities, Blyth, First Boston, Weeden & Company, and say, "I'm looking

for 1,000 shares each of these six utility stocks. Give me your best offering”. And, many times, they would get it net at the closing price. So, that was much better than giving that order to Merrill Lynch, or Paine Webber or some firm who had an office in Minneapolis, and who felt that the State ought to use brokers with local offices, rather than going to New York and doing that business.

KD: You've given me a good sense of how your business was evolving here, and you talked about how you really worked in the back office a good bit, in your early years in Weeden.

DW: I knew the back office, yes.

KD: How much did you get out and interface with the rest of the industry, with your customers, with regulators, that sort of thing?

DW: I had become our market maker in dollar quoted municipal bonds. Most municipal bonds were quoted in basis points. And there were certain bond issues that were so large that, instead of doing it at a 5.20 less a point and a half, we would just make a market, ninety-nine to a half, in dollars, and we would be willing to buy on our bid and sell on our offering. And, I did that for a couple of years, maybe three years, and then I went over to the stock trading desk and began to go out and call on customers. Usually, it was a small bank that we didn't do business with so that what I said wouldn't hurt us too much.

KD: So, it was a training?

DW: I gained some experience, certainly, in market making and I had some experience in selling to the institutions and to the non-member broker dealers.

KD: Now, you folks would have been members of the NASD, is that right?

DW: We were always a member of the NASD. In fact, my father helped find Wally Fulton, who at that time was the Securities Commissioner of California. He became the first Executive Director of the NASD in 1939.

KD: I'm interested in your relationships with regulators, including the NASD, and maybe even the SEC.

DW: Well, we certainly had a relationship with the NASD, but our customers were entirely institutional. We had no retail business. So, the focus of the NASD, on what was your relationship and how did you handle your interaction with your customer, was really not a problem with us, or with them.

KD: They were mostly focusing on people dealing with the public?

DW: Yes. The NASD was set up to self-regulate the non-member broker/dealers who were out marketing securities, either ones that they had in their own position, or ones where

they were acting as broker, and the NASD wanted to make sure that they didn't do it in an inappropriate or fraudulent manner. But, we didn't have that problem, because we had no captive customers. Nobody put their money with us; nobody was exposed to our capital requirements. All of our business was delivery against payment, so the relationship ceased seven days after the trade, and they either got paid, or we got paid from them very quickly.

And, because our focus was on municipal bonds for such a long time, there again, we had no relationship with the SEC, because they were not involved in that business. So, from that standpoint, and the fact that we were not a member of an exchange, added to the fact that we had no retail business or relationships that had to be overseen or regulated. We really didn't know much about the SEC up until the time that we became aware of a decision by the New York Stock Exchange with respect to the firm Municipal Securities in Dallas, to pull their ticker tape and require all of their member-firms to withdraw their direct lines.

KD: That's the *Silver* case?

DW: That was the *Silver* case. And, up until that time, we really had no involvement, or reason to wonder what the SEC was doing, or what their thinking was, how they viewed competition, et cetera.

KD: Well, tell me about the *Silver* case, and how that changed the way you folks looked at your business.

DW: Well, *Silver* went to court, in the District Court of New York, charging the New York Stock Exchange and its members with a conspiracy to reduce the competition just because on the basis that they, Municipal Securities had done something wrong, although the New York Stock Exchange was not even willing to tell them the basis for their action. They felt that there was an antitrust violation, and so they went to court. That was in '59. Finally, in the early part of '62, the Judge, Frederick van Pelt Bryan, decided, on behalf of *Silver*, that there was a violation of the Sherman Antitrust Act. And that was very pleasing to us.

Then, very quickly, the Appeals Court reversed that decision, two to one. And the reversal was based upon an *amicus curiae* submitted by the Securities and Exchange Commission that said, essentially; there is a requirement under the Securities Acts to encourage self-regulation. And The SEC feels that the New York should have the right, including to the kind of action they took, to regulate their members. It was on that concept that the Appeals Court reversed the District Court.

KD: Now, you must have been concerned that, if they could do that to *Silver*, they could do that to you?

DW: Well, yes. That was of great concern to us. We had been surprised that the SEC took that position. Up until that time, we had merely watched the whole process. Fortunately, it did not rest there. But the lawyers for *Silver – Silver* was dead now, including his wife who was a lawyer -- decided to go forward and take it to the Supreme Court. We now decided we better go down and talk to the SEC and the Justice Department as well. Our efforts with the SEC were unsuccessful. We didn't find any interest in what we were telling them.

KD: What did you tell them?

DW: We said, "Who do we talk to about this particular case?" And, it was more or less the kind of thing that the SEC usually says; "We don't talk about things that we're involved in." That was when we ran into Dave Silver, who, we had found out, had been a clerk for van Pelt Bryan and he was now working for the SEC. We met with him, if I remember correctly, at Whyte's Restaurant on Fulton Street, and explained to him the competitive issues involved in this decision. And I think that Dave was responsive, although he was a low man on the totem pole. He explained his views to others but found that the SEC stood fast on the importance of supporting self-regulation was the predominant issue.

Meanwhile, we went to the Justice Department, and met with Lionel Kestenbaum, George Reycraft, and eventually Don Baker, who really jumped on this. I mean, this was a classic problem. It was similar to, I guess, the Associated Press Case, where the

Associated Press told its membership that they couldn't deal with anybody else outside of the membership. And, the Supreme Court said that they can't do that. They have to allow their members to do whatever they want to.

KD: Real simple antitrust.

DW: Very basic. I mean, if antitrust means anything, this was a classic case for it. And, ultimately, it was the Supreme Court which came down on the side of *Silver*, saying while the Exchange Acts did turn over responsibility for oversight of the industry to the SEC, and therefore, was superior to the Sherman Antitrust Act, it didn't go all the way. It wasn't a carte blanche where the Sherman Antitrust could not come into our industry and be applied under certain conditions.

They said that a basic due process should apply; That the NYSE had to go through a due process, and then, the SEC had to go through a due process of the action being taken by the NYSE, and the SEC then had the right to reverse what New York did, if they felt that it involved an anti-competitive action.

So, that was the first indication to us part that the SEC's interest was directed towards, let's say, supporting what the New York Stock Exchange was doing, because they felt they were the best self-regulatory body in the industry, and the SEC didn't want to do anything that would undermine that.

KD: At the same time, the SEC, which had been sort of going along on autopilot for quite some time, started to actually take some steps. The Special Study was shortly after that, I think, and Dave Silver, who you knew, was involved in the Special Study. Tell me a little bit about your involvement with that. My understanding is that, that's where the term came from, the third market.

DW: Yes. I guess I would say that it was a surprise to us, this attitude towards competition. Back in 1940, they did recognize the anti-competitive nature of an effort by the New York to prevent their member firms from making markets on the various regional exchanges in the 1940 Multiple Trading Case. So, what happened in the interim, it is hard to say?

But, at the same time the *Silver* case was unfolding, the SEC was investigating some really egregious insider trading on the floor of the American Stock Exchange. It was called the Re Case, but the misuse of that marketplace went far beyond Re. Re was the focus that drew the attention of the SEC, but, it also drew the attention of Congress. And it was out of that investigation, that Congress reacted to a request by Bill Cary, I believe, who was then SEC Chairman, appointed by Kennedy, to really go back and take a look at all of the markets, as they had developed from the early thirties.

That was the genesis of the Special Study. Interestingly, it was set up in a way that Congress didn't allow the SEC Commissioners to determine what the study was going to say. It reported to the Commissioners, but it couldn't be changed by the Commissioners.

Whatever that meant at the time, I don't know. Maybe there was some concern that the Commission itself had certain biases that they wanted to avoid in the Special Study, and that's, of course, what happened.

The Special Study started out by -- as I understand it - Milton Cohen saying, "We're going to divide this study into project one, which is the exchange market; project two, which is the over-the-counter market."

And Dave Silver said, "There's this other market, which is the over-the-counter market, but in listed securities." So, that became project three, which became the third market. This was a nice thing, because it was easier to say than "the over-the-counter market for listed securities."

KD: So, did you talk to him and explain to him how this business worked? Or, did you talk to other folks, as well?

DW: Well, out of their developing a whole section on the third market, they talked to us. And at that time, we were the only firm that really sensed the issues involved. I mean, firms like First Boston and Blyth were somewhat indifferent. This was a small part of their business, and they were mostly institutional oriented anyway. Then, there were five or six firms who were only making markets in very small amounts for the non-member broker/dealers. Weeden covered the waterfront, in terms of who we dealt with.

We were eager to tell the SEC what was happening because we didn't feel that there was any wrongdoing, despite what the New York was suggesting. We were a competitive market, and the people that we dealt with only dealt with us because it was to their advantage, or their beneficiary's advantage, to deal with us. Because it was a fungible product, we were either getting them a better price or a larger amount at the same price. Whatever benefit they saw was what we provided.

We had no special relationship with our customers; it was an arm's length, negotiated deal with each transaction. We wanted the SEC to know that. And we were very happy to expose to them all of our information as to what the last sale was at the time that we traded, what kind of markets we made, what profits we had, who we dealt with, why they came to us in the first place.

KD: Did you get any skepticism from the folks doing the Special Study, who had been listening to this exchange?

DW: No. I thought that our relationship was very straightforward. And, it included those who were involved in designing the questionnaires going to our customers and the other third market makers. We helped them design the questionnaires that we thought would give them as full an understanding of what was going on. Walter Werner was then assigned the job of pulling all of that together and making sense out of it. We helped them consolidate all of the information that they had found out. We were quite comfortable doing that. It was very straightforward.

And, in this particular case, we got along very well with the SEC. We thought that they were very bright and cooperative. There seemed to be no prejudices, biases. And so, it was a very good result, from our standpoint.

KD: When the report came out, and it exposed a lot of people to this business that a lot of folks hadn't thought about, did you see a change? Did you get more customers? Did you get more competitors?

DW: No. But it certainly allowed us to stand up a little taller and speak about what we were doing. Up until that time, we felt that staying under the radar, just doing our business was the best policy. The non-member broker/dealer community was just delighted with us. The institutions were varied, actually, because, to many of them, the fact that we introduced another price besides the "last sale plus a minimum commission", complicated the process that they went through to give out their orders for execution. Up until that time, with respect to orders in listed stocks, they could give it to anybody who was a member broker, who would, theoretically, get the same offering from the specialist, or from the book, as any other broker. And so, you could give that order to anybody.

There was a tendency of institutions to say, "I will try and see if there is one or another of those brokers who could benefit me in some way". A Trust department might say, "Hey, we'll encourage our bank's commercial deposits with this business", feeling that they were not jeopardizing their fiduciary responsibility, if they thought about it. Mutual

funds had their own reasons for giving out orders. Brokers sold their mutual funds. And this was a way of giving them a little “frosting on the cake” over the upfront charges that they already received.

KD: With no price competition, there’s always something else going on.

DW: Right. And investment advisors had their own deal. They would say, "You turn over your account to us, and we will give you all of the commissions that we create by buying and selling." So, we had problems in convincing the natural customers of ours, the institutions, to do business with us. And there were a whole slew of arguments why they shouldn't. Some of the trust accounts had built in their trust agreement that the trades had to be done on a certain exchange. Others argued that there was always uncertainty, and they might be criticized if they dealt away from the NYSE. And, who knows, when you don't print your transactions in the open market, there might be some concern whether we're really doing the right thing. We went through all of that.

And, of course, the New York Stock Exchange, as it saw that institutions were becoming a larger portion of the activity and we were getting more than our share, became more and more concerned about it. In fact, they formalized the requirement that their members could not go and use our market unless they checked through a governor on the floor of the Exchange. And, of course, you know how far that went.

So, it did help us, because it gave us an opportunity to use some of the language in the Special Study to remind, or suggest, that there was a price differential, because that's what they had concluded, and therefore, suggesting that there was a fiduciary responsibility to at least check us. And, of course, that ended up with people like Abe Pomerantz, going after the banks and some of the mutual funds, when he found they had a blatant disregard for the third market which, because of the Special Study, could no longer be ignored.

KD: Pomerantz?

DW: Abe Pomerantz. He was a lawyer who would sue on behalf of all of those owners of mutual funds.

KD: A class action kind of thing?

DW: A class action, that's right. Also those people who were the beneficiaries of trusts.

KD: Well, we really are looking at a point here where your business is taking off, mid-sixties, shortly after the Special Study, and through the 1960s. And you talked about some of the reasons, although you also talked about this resistance. Was it just the sheer volume of the institutional business that overcame this resistance? Or, what was behind that growth in the sixties?

DW: Well, the growth was, in part, due to increased recognition. Also, the institutions were getting larger, particularly the mutual funds, and were looking for larger and larger offerings, or markets, and were really growing faster than the capacity of the specialist system to handle it. And so, they began to use us more and more, and then they encouraged the dealer-oriented members of the New York Stock Exchange to respond by becoming block traders.

Essentially, these firms became critical of the inadequacy of the specialist system. They were saying, "Hey, we're losing business to the third market." They were Salomon Bros., Goldman Sachs, Bear Stearns, Shields and others. "Come to us with your block, and we'll put up our own money and become a block positioner, and we will take the risk." And so, that was also developing during the sixties.

KD: They would have still been going through the floor, though?

DW: They still went through the New York Stock Exchange. But, in reality, that business was negotiated upstairs and only brought to the floor of the New York for execution and printing. And then, of course, as this practice became more widely used, the mutual funds, who had many non-members selling their funds, the idea of giving a little extra frosting to them by giving them an order for execution on a regional stock exchange became common practice. It developed because there was a give-up opportunity within the rules of the New York Stock Exchange wherein a New York member of regional

exchanges could, if the transaction took place on one of the regionals, give up part of his fixed commission to a regional-only member.

And then, the regional stock exchanges expanded their membership to include non-members, who paid a small access fee to effect trades on their floor.. This expanded even further the ability of the mutual funds to distribute their commissions to those who were selling their funds. Eventually, it was Bob Haack, who, at the time, was President of the NYSE, who made his statement at the Economic Club, "Look, we've got to do something. It is this fixed commission, with respect to institutional-sized orders, that has so much fat in it that it is fragmenting the marketplace, and we've just got to get rid of fixed commissions".

KD: Before he did that, there was a little flurry of interest in fixed commissions. In about '68 or so, the SEC, the Justice Department, were both having hearings on fixed commissions. Did Weeden weigh in at that point?

DW: Well, yes. There were SEC Hearings in '68, on fixed commissions. And, at that time, I think that the Justice Department didn't have their own hearings. They just made a contribution to those Hearings.

KD: What was Weeden's position?

DW: Ours was, first of all, to describe and defend the competitiveness and the appropriateness of the third market, and the fact that there was nothing untoward about what we were doing, in terms of harming the public interest or misusing our role as a non-reporting marketplace, and so forth. And we believed at that time, upon questioning, that there was no reason to continue fixed commissions, which we didn't need and we didn't think were appropriate, because of the economics involved. I mean, the fact that a 10,000 share order, which was not an unusual one back in '68, '69, would give you 100 times the commission, relative to a 100-share transaction, where, probably, the cost of handling it was only twice.

It was kind of absurd. I mean, it was so absurd that it's surprising that the commission didn't understand that. So, one looking at it, said to himself, "What are they thinking?" And, yes, we also heard Keith Funston, saying that fixed commissions were one of the pillars of the Stock Exchange and important to the American system of capitalism, and they must have been listening to that. I mean, that's what really surprised us about the SEC's mentality.

And, of course, by 1968, you had Chase listing on the NYSE, because the '64 amendments to the Exchange Act required the same kind of listing and reporting of over-the-counter stocks as it did listed stocks.

When Chase listed, M. A. Shapiro said, "The NYSE rule prohibiting member brokers using the off-board dealers is a Sherman Antitrust violation." It's important that you

understand the difference between Schapiro and Weeden in this situation. The NYSE was taking something that had been Shapiro's business, making markets for member firms in bank stocks, and taking it away from him, whereas we were trying to take NYSE's business away from them. I wouldn't say take it away from them. We just wanted to compete with them.

So, we had a different view of that whole issue than Shapiro. And, we declined to go forward with him in bringing an action against the SEC and the New York Stock Exchange for violating the Sherman Antitrust Act. Even though the Justice Department said that the rules of the New York Stock Exchange, namely 394, were a violation of the Sherman Antitrust Act.

SEC didn't pay any attention to that, except to have a very thorough investigation of Rule 394. That report was done by Gene Rotberg. I think it was, I don't really know, 2,000 pages of data, and 200 pages. The report suggested some ways that you could change Rule 394, that would be fair to the third market people, and to Shapiro. But the SEC deep-sixed that report. The SEC deep-sixed that report for five years. Well, I mean, again, what was the basis for doing that?

KD: You've got a very conservative commission at that point, clearly.

DW: Well, yes, that's right. Manny Cohen, who had been around the SEC for a long time was now Chairman. We just didn't understand it. My father reluctantly accepted the

compromise, 394B, whereas the sons said, "It's not going to work, but we will do whatever we can to make it work." And we scrupulously took information on every time we were exposed to an order that came off of the Exchange, in a block, that went through their new process of making sure the Exchange market was not good enough. I think there were 125 such transactions during that year. In fact, we had a full-page ad showing exactly what we did, and what happened on all of those inquiries. And after the first year there was almost no further inquiry that came from New York Stock Exchange brokers which put us into competition with the floor.

So in 1968, the SEC had punted on their ability to correct that situation, and were now holding hearings on fixed commissions, and ignoring what the Justice Department said in their full brief. I mean, when you say conservative, that's an unusual word to use. Other people might say that it was something a lot worse than that.

KD: Well, you were certainly saying things, because it's about that time that you start to get into the headlines a little bit, as being someone who's speaking out, certainly on behalf of your company, but just generally on behalf of creating a truly centralized market. What was behind that?

DW: It was our experience with 394(b), and what came out of those Hearings. I think there were two people representing the third market in those Hearings, and I bet there were fifty people from all over the country who represented every district where there was a congressman or a senator who was on some subcommittee having to do with the

securities industry. The weight was certainly against us, and the SEC seemed to be indifferent to our arguments. . And so, the young Weedens said, "Look, we've got to go public on this."

From our perspective, it was very clear that the New York Stock Exchange became much more concerned because our volume was going up. And we were really challenging their way of doing business.

That's when they started talking about commission discounts on \$500,000 trades - and even smaller ones. Their idea was to specifically target those kinds of trades where the third market was making the most penetration. And so, the seminal letter that we sent the SEC was after those Hearings. I had just come off a race for Congress in 1968, and I was assigned the job of going public and explaining, to whomever we had to explain, our side of the story. We knew that the New York Stock Exchange was going out to their "listing" corporations and telling them what a bad market we were. I mean, they were saying a lot of very unpleasant things.

So, we sent a letter to the SEC pointing out that there were certain changes that were taking place in the market that were quite natural, one of which was this trend away from auction markets when institutions became larger and larger participants in those securities. The other thing was the developing technology.. Now, this was '69, and that's two years before NASDAQ . And we pointed out that the central marketplace is no

longer a geographical concept. It's really a communications concept, and the technology will allow people from all over the country to participate in a central market.

People were concerned that there was fragmentation going on in the marketplace, causing unfairness. It was causing a reduction in transparency and full disclosure of what was going on in the market, and so forth. And people began to talk about bringing all of the transactions together on one tape, which we, in that letter, supported. In fact, we were one of the first to have said, "If you're worried about these trades not being printed, we'll be happy to print them. If you're worried about uneven regulation, we're certainly willing to be regulated." We tried to undermine all of what might be considered legitimate arguments.

KD: So, the concern about fragmentation was that, what you're talking about, that's geographic, it's different exchanges. And when you started talking about different exchanges, that concerned some folks?

DW: Yes. It was being asked: "Why did trades go out to the Pacific Exchange? Why did they go into the third market? We don't know what's going on; we have no way of evaluating whether the public is getting best execution or not. Maybe there are some reasons that are untoward, or negative, or against the public interest". And so, we tried to undermine all those concerns and said, "Hey, this is a natural process. If you are concerned about centrality, there is a solution to it, and that is in the technology."

KD: Were there other people who were thinking those same thoughts, at that point, who were thinking about unifying all these markets with computers?

DW: You know, I don't remember. We were such a good advocate for the third market that all of the other third market people were quite happy to have us spend all of our time and effort doing that. I mean, Boyd Jefferies, for instance, told me, "Hey, you know I don't have time for that. Good luck, Don." And others felt that they had very good relationships with the New York Stock Exchange and the brokerage community, and why should they get into a public argument. We had nothing to lose and felt that now, because this business was becoming more significant to us, that we had a responsibility to talk about it.

KD: And your brothers were doing a lot of the management of the company, in any case?

DW: Yes, right. I had a brother, Jack, who ran operations, and another, Alan, had been head of municipals and then had undertaken the overall direction of the company. So, that's what we did. And that was just the beginning of the New York becoming more aggressive. First, they tried to demean our business, to point out the inappropriateness of what we were doing; how we undermined the auction market, "the citadel of American capitalism". Then, they tried getting rid of us through regulation. That was, of course, the whole purpose of the Martin (William McChesney Martin, former Chairman of the Federal Reserve) Report, which called for the "elimination of the third market." An

extraordinary document, that got the proper reaction, which was almost overwhelmingly negative.

One of the wonderful things that happened to us was Jim Lorie walking into our office. He was a very well-known economist with the University of Chicago, Graduate School of Business. He said, "What can I do to help?" We said, "Write a letter to the SEC." And he did, and he had nineteen signatures from the twenty-one top economists in the country. I mean, every name from Milton Friedman on the right, to Paul Samuelson on the left. Franco Modigliani was there, George Stiegler, nineteen names. It was a one-and-a-half page letter that just demolished the underpinnings of the Martin report.

KD: Now, my sense of this is that, the thing that set the stage for this next phase that you're talking about is the back office crisis, and the re-evaluation that came after that. Congress is having hearings, and they're talking about –

DW: Right. Congress reacted to the fact that the New York Stock Exchange had to close in order to allow its membership get their back offices in order. Because of the failure of many of those firms, their customers were exposed to losing all their money on deposit with them.

And so, the industry went to Congress and said, "What we need is something similar to what the banks have, which is an industry-wide insurance." And I think it was Congressman Moss who said, "If you want legislation that will create a Securities

Industry Protection Corporation (SIPC), we're going to conduct a study on how you got into this problem in the first place?"

So, both the House and the Senate, I think beginning in 1971, instituted special studies on their own, in which they hired outside people, people like Dave Ratner and Charlie Curtis, Harvey Rowan, Bill Painter, all very good people, who came in and took a look at the issues. And I became very active in going down to Washington and telling them what I thought went wrong, because it not only included what happened in the back office, but what was happening in the marketplace overall. And that was what we emphasized in our 1969 letter.

KD: Now, were you meeting in sort of separate sessions, as well as testifying?

DW: Oh, we would go down there and talk to members of the study group, who were not members of the House or the Senate. Once they wrote their basic report, it went to their respective committees, and then we testified at the Hearings. And we told it as we saw it. And we were quite pleased with the way both of those studies came out. We thought that they understood the main issue. They understood it, as opposed to the SEC, who was still fussing around with it, which, I have to say, we just never could understand why they were so reluctant to do that which they ultimately came around to doing.

KD: Well, the SEC at this point, I think, early seventies, is starting to do that gradual, they're taking away fixed commission rates on very large orders, and they're moving down step by step. I guess Brad Cook was doing that?

DW: It started before Brad. There was the Martin report, and then Casey called for public hearings on market structure right after that. I mean, that was interesting. We had just been through Hamer Budge, who followed Manny Cohen as Chairman. And, while we thought that Manny Cohen was close to the New York Stock Exchange, for whatever reason – I mean, the nice thing, none of those people were dishonest, or were doing anything untoward. They just had an attitude. And we didn't fit into that attitude for a long time. But Budge went a little bit far. When the NASDAQ was about ready to start up, both the New York and American Exchanges came to Budge and said, "You really can't allow listed stocks to be on that electronic marketplace."

And Budge met with the heads of the NASD, and the NASD reversed its position, which it had reiterated a number of times; that listed stocks would be on the new NASDAQ system. They reversed that. And that was done with the encouragement of the SEC chairman. It was a terrible thing.

KD: So, how would that have changed your business? Would that have given you an advantage? Would that have been helpful, if you'd been able to work on NASDAQ?

DW: Remember, NASDAQ was an effort to bring all of the over-the-counter market makers together, to centralize them, to provide a centralized marketplace for unlisted securities. And it was a great step forward, the best thing that happened to the over-the-counter market. Strangely enough, this type of technology improvement was the birth of an extraordinary growth in that marketplace. The CBOE was the same thing with respect to options. And one would think that the New York Stock Exchange would have thought the same way. But, they had a structure that was dominated by people who had monopolies on the floor of the Exchange, and they didn't want to change. It's just that simple.

And so, Hamer Budge says, "Hey, these people don't want their markets to be exposed on that marketplace, because, they're afraid that it might take over." Well, of course, they should have been afraid. But again, this was an active decision on the part of the SEC, which was a little bit different than reluctance, a concern about self-regulation being impaired by antitrust action. Do you see the difference there?

KD: Yes, I do.

DW: And so, that was very troublesome. We just reacted to that very quickly. And again, recognizing that the only way of getting anything done was to compromise, we did get everybody to agree that we'll have a pilot for about fifty New York Stock Exchange listed stocks that would be done on the newly developed NASDAQ system. And we even

followed that with a study which noted that the spread of the market on the New York Stock Exchange had narrowed, because of the competition. But, it didn't blossom.

KD: Why not?

DW: I think, one of the reasons was the considerable pressure of the New York Stock Exchange on all its members. And I think that, as it was with the Cincinnati market, which came a little bit later, there was a, "What are you trying to do, undermine our marketplace? Why are you doing those experiments with something that can do nothing but destroy the centrality of the New York Stock Exchange?" And so, that never went very far.

KD: We've been talking about the technology, and let's get into that a little bit, the big centralized trading systems that are starting to be played around with. I read that you were involved in the early stages of some of the first ones, AutEx, and Instinet. Tell me a little bit about how you got exposed to those things.

DW: AutEx was the first one that we were exposed to. AutEx started by Alan Kay. It was a simple screen-based distribution of inquiries to buy or sell that a broker had received from one of his customers. It enabled a brokerage firm to expose an inquiry simultaneously to a large number of buy side institutions who had a screen. For example, some Houston based institution, which might not have a direct relationship with that particular broker, might see an inquiry and call up that broker. "I see that you have an

inquiry, and we are interested, and this is what we will do." It would be an efficient way of attracting the other side of an order and earn a commission on both sides of the trade.

And we, who already had a vast array of salesmen around the country, who, each time we would get an inquiry, would call all of those same institutions. AutEx was a very efficient way of doing the same thing. And, while it might not be so beneficial to Weeden, it would certainly be beneficial to the Boston brokerage firm, who didn't have an office in Houston. And so, he would support it. So, when we heard about it, we went to Alan Kay and said, "If you need some money, we'll go into the second round."

Now, at that time, because Autex looked like a very attractive development, the New York created their own competitive system, called BAS. I forget what BAS stood for, B-A-S. And the NYSE encouraged all of its member firms to use BAS, although most of them already used AutEx.

Fortunately, BAS had the problem that after the broker distributed his information, the information coming back had to go through the specialist. And the specialist was no better able to handle that inquiry than he had been in the first place. So, it died. It slowly died, and AutEx developed.

From our point of view, the difference between the two was that BAS would not allow us to be part of it, and AutEx would. And so, you know, in the back of our minds we thought, "We'll put some money in there, and it'll be very difficult for AutEx to ever

agree, on the 'banks of the Potomac' (ala the Hamer/Nasdaq deal), not to allow any third market firm to use it." That was in 1968.

In 1969, Instinet came along. And that was different in that it was a system that would allow institutions to interact directly and anonymously with one another. So, Instinet could supposedly eliminate not only the third market and the exchanges, but all of the member brokers.

At that time, not even the institutions were ready for that. Their ties with the financial community were such that they didn't want to bypass it, for whatever reason. And so, many of them took Instinet, because Abe Pomerantz was going around saying, "Are you guys using the third market, are you using these new electronic systems that allow you to get a better price?" And so, a lot of them, as a matter of protection, did install a screen in their trading room, but they weren't used very much. Because, basically, the institution was saying, "Look, I am the one who is sitting back, listening to what's in the marketplace. I don't go out and tell people what I want to do. I want to react to what I hear from the brokers."

So, none of the institutions put anything in the system for a long time. Until the mid-eighties, really, when Bill Lupien used it to facilitate business in over-the-counter stocks by encouraging the market makers to use Instinet as a place where they could get a better bid or offering than they could by going to one of their competitors. They would secretly put bids and offers into Instinet, and the institutions, who were seeing a quarter, three-

quarters market in the NASDAQ system, but, at the same time see 500 shares offered in Instinet at a half. So they would buy the 500 shares in Instinet.

As that happened more and more, it created a critical mass. Although the over-the-counter market makers really didn't like Instinet, they used it, because it served their purpose of not having to go to their competitor, but could go to some unseen institution to help them balance their inventories. And the institutions used it more and more and it became a very viable inside marketplace, because the over-the-counter market makers were -- maybe not conspiring to keep the public markets wider, but instinctively understood that that was better for everybody, to have a quarter/three-quarter market, as opposed to a quarter/half market, publicly displayed.

KD: Now, Weeden put a lot of money into Instinet, at some point.

DW: Yes we did over time. And actually, when we got to the point where we had our own problems in 1977, we owned about 92 percent of Instinet, because we thought it was a great idea. Frankly, it competed with our own sales people and got no cooperation from them. But we kept feeding it.

KD: So, you looked at this as an investment, I guess?

DW: It was an investment. It was also a recognition that technology was going to change the way markets operate. That's the nature of technology. It eliminates middlemen. It

automates a manual operation. I mean, take the telephone company. When I grew up in Alameda, California, one of the largest buildings was owned by the telephone company. And it was filled with women who were saying, "Number, please?" And, slowly but surely, those middlemen disappeared. If they had owned the telephone company, the telephone company might not have voted to go that route.

KD: That's a great analogy. Let's talk about the Cincinnati Exchange, and your relationship with them.

DW: Well, that came about in 1969. In '69, we were in the process of joining various regional exchanges, because we found that they were a good place for us to either make a market, or to provide the other side to an order that came from a mutual fund, which was initially given it to a NYSE member firm, who went out to one of the regional exchanges in order to give-up some of the fixed commission to a non member broker who the mutual fund was interested in compensating.

We were joining the Detroit, the Pacific, and the Boston. The Philadelphia was especially aggressive. In fact, they encouraged institutional membership, one of whom was the state of Connecticut, who felt that if they couldn't join the New York Stock Exchange, they would join the Philadelphia, and thereby benefit from the give-up down there. And so, we approached the Cincinnati Stock Exchange, which was only doing 1500 or 1700 shares a day, mostly odd lots in Cincinnati Telephone and Telegraph.

KD: It must have been just hanging on by a thread at that point.

DW: Yes. Yes, they were dying on the vine. They had a great big building, and nothing was going on. We said, "How about, if we're the odd lot specialist?" So, they went through the process of changing their rules to allow us to be the odd lot specialist.

We ran into a little problem, because the American Stock Exchange objected to that, feeling such a change in the rules required a public hearing. The SEC, to their credit, said, "No, we'll let this go through." I think this was in 1970 or '71, that we started making markets there, and we ballooned the Cincinnati from 1700 shares to 8 million by 1977. Then we had our own problems and ended up merging with the NYSE firm, Moseley, Hallgarten and Estabrook.

KD: Tell me about the automated system that you put in there, and where that started.

DW: If you remember, you had these two Studies by the Senate and House. Then you had the Hearings on them. Then, in 1973, legislation was proposed. It was about that time that the New York Stock Exchange was really becoming concerned. They had shifted their focus from regulating us out of business to, legislating us out of business. And so, they had one of the Congressmen propose what came to known as the Fail Safe Amendment that required hearings on whether the SEC should be given the authority to close down the Third Market if they thought it would be necessary to preserve the NYSE.

We were now at the end of '73. We had gone through Hamer Budge and William Casey, who, to his credit, recognized after the negative reaction to the Martin Report and the Hearings on Market Structure there was no way the SEC could get rid of the third market. And, as an aside, Casey hosted an interesting dinner, attended by all the members of the Yearley Committee on Market Structure that had been going nowhere. It was a committee they finally put me on, because they really couldn't make any decision for the securities' industry without the third market participating and agreeing.

We had this dinner and Casey turned to me, after cigars and cognac and so forth, and said, "Well, what about it, Weeden? What are you going to do?" And I said, "I'm sorry, but, getting rid of the third market is not right, and it's not in the public interest." It was shortly after that, that the SEC's White Paper was written, I think by Phil Loomis, which said, "We want to know something more about the Third Market and the SEC should have more control over it in order to properly regulate what's going on. But, we accept the fact that the third market is here to stay."

So, about that time, we have these two congressional committees coming forward and proposing some important Amendments to the Exchange Act. And then, there was the so-called Fail Safe Amendment that came from the New York Stock Exchange. By now it was clear that fixed commissions would definitely end at some point in time and the New York Stock Exchange tried to sell the notion that it would eliminate the NYSE, that everybody was going to scatter and get out of being members, and go off and do their own thing in the over-the-counter market. This fear was in spite of testimony, I think it

was in the *Thill Case*, in which Merrill Lynch, Goldman Sachs and others said, "We're not going to leave the NYSE, even though they get rid of fixed commissions."

But, anyway, they wanted the SEC to have the power to close us down, in case anything looked like something untoward might happen, whatever that means. At that point, both Chairman Casey and Brad Cook had left and Ray Garrett came along. And in the Hearings on that Fail Safe Amendment, the Treasury Department, the Justice Department and the SEC all said, "You can have something, but we're going to water it down so that the SEC isn't going to be there, poised, ready to get rid of the Third Market."

So we at Weeden determined there was going to be some sort of central market, or national market system.. Everybody had agreed there won't be any fixed commission but, in terms of the market structure, we should put all of the trades on one consolidated tape, and make all of the quotations available in one place. And then, we should allow for all of the marketplaces to interact in an efficient way, for the purpose of allowing something akin to what was developing in the NASDAQ market.

Now, the NASDAQ market wasn't perfect from a technology standpoint, but nevertheless, it had this ability of putting all market makers on the same screen, and then, people can make a choice of where they want to go. But we didn't think that the NASDAQ system was very efficient. We thought we could design a better one. And so, my brother, Jack, in 1974, began designing one and we spent a couple million dollars designing a vast improvement over the NASDAQ system.

When I say "vast improvement," you have to understand the NASDAQ system at that time. The main problem was that a market maker could only look at one stock at a time, even though he was trading twenty stocks. He would look at that stock, and he would see what other people were doing, and then he would change his market, depending upon whether he was a buyer or seller.

Now, only after he changed his market in that stock, could he go to his next stock, and then the next stock. You can see that might take five minutes, or ten minutes. In a fast moving market, he might be way behind the other market makers in those stocks he hadn't gotten to. So, we built a system that allowed them to look at all of their stocks at the same time, and change all of their markets a quarter of a point, or a half a point, or whatever was needed, with one click. So, if the market was beginning to go down, and the trader could see all of these markets away from him going down, he could just make one click one quarter point down and be protected against being "picked off". It was a terrific idea, and it was way ahead of other systems.

It also had the ability to complete a trade – that is, actually execute and report – something the NASDAQ was still unable to do. We called it WHAM – Weeden Holding Automated Market.

KD: Did it show limit orders?

DW: Yes. It would allow for limit orders. Our system, which we then introduced to the Cincinnati Exchange, not only allowed market makers to make markets but brokers could put limit orders in there, and the limit orders, by the rules of the Cincinnati, would take precedence. Even though they came in after the market maker had put his bid in at twenty-two and a half, if it came in at twenty-two and a half, it took priority.

So, here we are, a market maker, who had a lot of people who came to us first. We were saying that in our market system, we will give up any advantages that we have, in terms of a customer base that we have developed. We were willing to give that up for this concept, which had been bubbling up, and pushed by the New York Stock Exchange, that the customer order ought to have priority.

And so, we said, "We'll build a system that does that, and we'll call it a central limit order book (CLOB). And every specialist on the New York, on the Midwest, Philly, Boston, whoever wants to go into that system can make markets. But, if E.F. Hutton comes in with a legitimate customer limit order, that order has priority. That was the concept of our multiple dealer trading system (MDTS).

We even got three of the regional exchanges to experiment with it for a while, until the New York Stock Exchange came along with their inter-market trading system (ITS), and their "promise" to create a limit order system. I think it was called LOIS (Limit Order Information System). They promised to introduce another system that would allow people to have access, which also never came about, because the New York already had

the only limit order system in the marketplace. And they attracted business, because, having those limit orders on the specialist's book, allowed them to narrow their market and make it more attractive than the other exchange's market. So, we designed our MDTS. Then we built it. We presented it to the Cincinnati. It was experimented with by other marketplaces, Midwest, Philly, and Pacific. And then, when they were exposed to the inter-market trading system (ITS), they liked that better, because that gave them something they hadn't had before. And that was access to the New York Stock Exchange floor through ITS without it costing their traders any commissions which they had to pay if they were not a member of the NYSE.

KD: They'd go right to the specialists?

DW: Right and they didn't have to pay somebody who was a member of the New York Stock Exchange to handle that transaction. That was an important goodie for them. Unfortunately, they were not ready for a marketplace that exposed them to toe-to-toe competition with the New York specialist. They were hesitant. And, of course, we argued with them. We tried to persuade them otherwise. "Look, this is your opportunity to become something besides a market that gets crumbs." And, of course, the result was that it wasn't until 2007 that, finally, the SEC got around to forcing a real-time electronic interface among all the marketplaces.

By that time, 2007, the various regional exchanges had gone off and were doing other things: options, or derivatives, or Archipelago. I mean, they all but disappeared.

Midwest still did a little business. But the New York continued to do over 80 percent of the business. They were even receiving 90 percent of the revenue from the Composite Tape Association because their transactions became smaller than the transactions on the regionals.

And finally, the SEC enacted Regulation NMS which leveled the playing field with the result that the volume on the New York Stock Exchange went from over 80 percent to under 25 percent. I mean, think about that, when you wonder what the role of the SEC was during that period of time.

KD: It took a long time for a lot of people to adjust to the fact that that was going to happen. Mid-seventies, clearly, the New York Stock Exchange, people are still thinking about that as the market.

DW: Right. You know, it's interesting that, to the SEC's credit, they did use their authority to bring together all of the clearing and settlement and depository services, and that was great. It was a natural development that made the back office more efficient.

The SEC created the Composite Tape Association, but left to the NYSE a veto power over all changes, including any decrease in charges, although no veto power over any increase in charges. How could they do that? Why did they do that?

I thought that the SEC, under Casey, finally did the right thing. I thought that under Brad Cook, the SEC had made it clear that they were going to move forward to a central limit order book.

The National Market Advisory Board, which was created by the 1975 Exchange Act Amendments, whose members were appointed by Ray Garrett, did, in fact, make recommendations that should have led to some form of a Central Limit Order Book, by the SEC, but was never implemented. Late in '75 there was another change in the direction of the SEC, first under Rod Hills, and then under Harold Williams.

KD: I don't want to let you go without talking about the National Market Advisory Board, because that's a big landmark, and you were on that with a lot of other folks. You talked about a mandate. Was it clear, when you first convened, that you had a mandate?

DW: It was very clear. It was to design a national market that isn't fragmented. We believed that fragmentation could be eliminated by creating an electronic system that incorporated all elements of the marketplace; centralize the reporting of transactions, centralize the display of quotations in the market, electronically allow every marketplace equal access to all the order flow— and where the public customer was going to have priority over the market makers. If there is an opportunity for a customer order to meet a customer order, we wanted that to happen. The only way that that could happen efficiently was to have some sort of centralized system for showing limit orders on behalf of public customers

and to have other public customers be able to interact with those orders directly, And that language was built into the mandate.

KD: So, one would think that a lot of the discussions, then, were about electronics, and how to design this electronic system.

DW: Absolutely. And Bob Hall, President of the Securities Industry Automation Corp. (SIAC), the NYSE's computer operations subsidiary, would testify on behalf of the New York Stock Exchange, that it was going to cost \$5 billion, or something like that, to build a CLOB. I mean, there were ridiculous statements about the complexity of it, the inability for the technology to handle it, what the cost would be. This was at a time when American Airlines created a system called SABRE for integrating information REAL TIME on tens of thousands of flights worldwide involving all airlines and making that information available REAL TIME to thousands of computer screens all over the world with the ability to interact with one another in a very easy way - far more complex than what would be needed for the National Market System.

So, it went. And the irony was that even though eight of the fifteen people were, to a degree, members of the New York Stock Exchange (They might be on a regional, but they were still members of the New York Stock Exchange), a majority of the membership, at the end, voted for some sort of CLOB.

The problem was that there was a hard CLOB, and a soft CLOB. And some people said, well, just leave it up to the industry to figure out whether it should be a hard one or a soft one. And so, it opened up the opportunity for the leadership of the SEC to react to the wishes of the New York Stock Exchange, who really didn't want a central limit order book. They wanted to keep their own central limit order book. And so, they introduced the inter-market trading system (ITS), which was an inadequate electronic system for doing that.

Now, they might say, "We kept an industry going that was on hard times, it was too early to do this experiment," blah-blah-blah. But, to wait until early 2000 to get rid of 394, and to wait until 2007 to finally create "Regulation NMS" seemed to indicate that the SEC did not understand, really, what its role was. And that was unfortunate.

In reading the Historical Society's description of the "Go-Go Years," it doesn't speak to that. It really doesn't give the reader any sense of what was happening, really, and what the SEC was missing in terms of their responsibilities to really create a marketplace that would be the most efficient and the lowest cost.

KD: Certainly, after '75, when they were given that job.

DW: No question. And, the fact that its account of these times starts with a quote from Truman Bidwell, a well known institutional floor broker in the 60s, saying that he really believes, "America first and New York Stock Exchange second." What was the significance of that?

KD: Well, the New York Stock Exchange always had a special view of everything. It started with the New York Stock Exchange.

DW: But the implication is, “Someone had to say that.” That's kind of like Nixon, “I’m not a crook.”

KD: That's one of the reasons why it's important to get the other perspectives, and look at not only the exchanges, but the other players in the market as well.

DW: You know, I say all of this but I have to say also, for the record, that most of the people that I met at the SEC, on the staff, were intelligent, were sensitive to these issues, in many ways tried to move things forward. And there certainly was a lot of discussion within the SEC, I'm sure, and unfortunately, uncertainty. Uncertainty breeds cautiousness. And I understand all of this. But, the outcome was that it really took the SEC 30 years before they tried to do the right thing— but they still haven't done it. They still do not have a central marketplace in listed securities that gives time priority to the public order. Can you imagine that?

KD: Let's wrap up a little bit with your company. Take you back. After '75, you were in the middle of another kind of growth spurt, and you started to diversify, things like that. Did you have a problem with competition, once the commission rates came off? Because, of

course, your business had always been protected by the New York Stock Exchange's policies.

DW: We had some, but we never felt that was the problem we had going forward. The real problem was that we had over-expanded. Our inventories to capital were higher than were appropriate in a time of growing inflation, particularly in the bond market. Not that we were acting casually or irresponsibly. We were getting into additional areas in our growth, most of which were in the bond area - corporate bonds, government bonds, convertible debentures, unit trusts in municipals - all of those things. But, our approach to taking on inventory and being primarily a market maker was slow in adjusting to a market that became more volatile. And we just, frankly, were not quick enough to react to that. And we had built up enough overhead that it was difficult to adjust quickly.

And so, we had to merge, which we did. It lasted six years. The merger continued the Weeden Holding Company structure. And when the old Weeden Equity Trading Group left at the end of '85, we bought back that structure, or that name of that structure, and started over again, but concentrating only in our third market activities.

That's what happened to us. But now the economic model was quite different. We were more cautious. Our inventories were not as great. But, we had a very good relationship with institutions that we had maintained while we were under the aegis of Moseley Hallgarten. And so, since 1986, we have continued to grow, and we do very well.

KD: So, you're still working on the third market?

DW: Yes and no. There were times when we actually joined the New York Stock Exchange, and then we found it was too expensive, that we could stop being a member and still execute transactions at a lower cost to us than if we were on the Exchange. We really don't think of ourselves as a third market firm because, really, the off-board activity in listed stocks dominates now.

KD: Right. After thirty-some years.

DW: Right.

KD: Is there anything that we haven't touched on that we should talk about?

DW: A couple of things. I would say, with pretty much all of the staff, we had good relations. Some understood more than others what we were doing, but there was this unevenness in terms of the chairmen. I think Phil Loomis stood out as being the smartest of the Commissioners and having the best understanding of what was going on during that period of time.

It's interesting, Rod Hills was a fraternity brother of mine at Stanford, and we even roomed together. And it's interesting that, when he was Chairman, we never talked about this issue, recognizing that we both had a responsibility not to make any attempt to

influence, or to even make use of my knowledge, to find whatever he wanted to find out through other channels. I thought that was illustrative of what was a high point in the way in which chairmen and commissioners react to their responsibilities.

KD: One other thing we haven't talked about is the people who worked with you at Weeden. You talked about "we did this" and "we did that." Who were some of the most important people working with you, all through these years?

DW: Well, the people that I relied upon, in terms of this work, were my two brothers, and obviously, my father. That was where a great deal of the discussion and decision making took place. Then, there was a good friend of mine, Fred Siesel, who had been working at the SEC and then went over to the American Stock Exchange. I think it was around 1971 that we had the opportunity of hiring him. And he was very, very knowledgeable, and very helpful in going down to the SEC, and being with me during our wanderings through the halls of Congress. There was also my good friend, Bob Beshar, who was counsel for Weeden during this period and who helped with our thinking as well as our relation with the Justice Department.

I remember one time; we were calling on Congressman Eckert. We had a forty-five minute meeting with him scheduled. And out of his office came at least a half dozen people, led by Lee Kendall, who was the president of the Association of Stock Exchange Firms. We all said hello. Then, we went in for forty-five minutes, or an hour or whatever. It was over the time that we were allotted. We came out, and there was Don

Calvin, head of NYSE government relations, with a whole phalanx of people representing the New York Stock Exchange. And it sort of illustrated what we were up against.

KD: You were caught between two really big players there.

DW: Yes. But, I would say I met some very good people. I knew Don Stone, NYSE specialist, and we had a wonderful relationship. He was a good friend, is still a good friend, and we play golf, Don and my older brother, Alan, and I, fairly often now. But, he was the representative of the New York Stock Exchange on the National Market Advisory Board, and I was the protagonist on the other side. And we would go at it for two days, you know, every month. But, we agreed that we would go out and play tennis at the end of the first day, and then we'd have drinks and dinner together. And so we did that. I played with Bob Swinarton, who was from Dean Witter & Company, and he played with Rick Guerin, who was a Pacific Coast Exchange specialist.

And we would go out and relax, and realize that we're all professionals, and we all have a point of view, and we're not going to cause it to interfere with our good friendship and our respect for one another. That was another very important thing that I learned, is that, despite all of our differences, those of us who were in the business, trying to provide important services to various groups, did have a respect for one another that overcame whatever competitive interactions that we might have.

KD: Well, that's great. I appreciate hearing from you on all this. I think it's been a big contribution.

DW: Good.

KD: Thanks a lot.

[End of Interview]