

Securities and Exchange Commission Historical Society
Interview with Margaret Henry
Conducted on April 9, 2014 by William Thomas

WT: This is an interview with Peg Henry for the SEC Historical Society's virtual museum and archive of the history of financial regulation. I'm William Thomas and the date is April 9th, 2014, and we are at Jefferies & Company in New York.

So, thanks very much for agreeing to speak with us today. We usually start by asking just a little bit about your personal background to find out where you came from, your education, that sort of thing.

MH: Well, I'm from Washington, D.C., one of the few people actually born and raised there. I went to college at Georgetown University, got a degree in urban studies, which ended up being where I spent my career, and I got a JD and an LLM in taxation from George Washington University.

WT: Could I ask you a little bit about, first, your decision to go into law, whether it had been something that you had been planning on as an undergraduate, and also your decision to do an LLM?

MH: Well, when I was in high school, I was very interested in the civil rights movement. And, when you think about it, I graduated from high school in 1969, so the movement was very much a part of the urban school system in D.C. that I attended. I thought at that time

that I wanted to be a civil rights lawyer. While I was in college, I developed an interest in cities, and developed an interdisciplinary major at Georgetown in that topic. And when I graduated from law school – I went to law school and I was interested in tax – I took a few tax courses and decided that I liked the subject area a lot, and decided to get an LL.M. in taxation. I actually taught tax for a little while. While I was teaching, I happened to get a job at a small law firm in Washington. One of the topics that they worked on was municipal bonds, so I sort of fell into that area.

WT: What was the law firm, if you don't mind?

MH: It was called Riddell Fox. It's not in existence anymore. And, actually, one of the partners left and then received a call from a headhunter asking if they knew anyone to recommend to Mudge Rose. And since he was actually on the outs with the firm at that point, he recommended that I apply for the job there. So I got the job and I moved to New York, which was at that time the largest bond firm in the country.

WT: Okay. So tell me then a little bit about your practice there.

MH: At Mudge I was doing exclusively tax. They had at one point about twenty-two lawyers in the tax department who were working on municipal bond transactions from the tax side. The number of lawyers varied during the time I was there. But I enjoyed the work a lot, and the people in the bond department liked working with me, and so I became a

partner after I had been there for about three years. I came in as a lateral associate and then quickly became a partner.

WT: So you were there from 1983 to 1988 all told, I see from your résumé here?

MH: That's right, and half of the time I was a partner.

WT: And so this was a very interesting time, of course, for taxes and municipal bonds, with the 1986 Tax Reform Act. Could you tell me a little bit about the impact that that had?

MH: It had a dramatic effect on Mudge Rose's business. As I said, it was the largest bond firm in the country at that time, when I became a partner. Right before I became a partner, which was at the beginning of '86, the House of Representatives had passed its version of tax reform, but the Senate hadn't taken it up yet. It was the first time that tax lawyers were going to have to render qualified opinions, because the tax exemption would depend in part upon whether issuers actually used the money the way that they had agreed to use it and if they invested in the proper way. So, at the beginning of February of that year, we did a transaction for the New York MTA. We gave this first unqualified bond opinion. We were one of the few firms in the country that was willing to do it at that time. We actually had 50 percent of all the bond business in the country at that point.

Now, once the Tax Reform Act passed and so many types of bonds were eliminated, and it was clear that it wasn't just the House that was eliminating them, the business was

affected considerably. That coincided with the increased prominence of regional bond firms, rather than the national bond firms like Mudge Rose and Hawkins, so when you combine the two of them the bond practice was reduced dramatically. So when I became a partner, bonds was about 50 percent of the revenue that Mudge Rose had, and by the time that I left in '88 it was only 25 percent. The person who ran the bond department used to run Mudge Rose. When I left, he no longer ran Mudge Rose. So it was a very dramatic effect, and it affected the business that we had, and it was one of the reasons I made the decision to leave the firm and go into government.

WT: Now, of course there were a lot of proposals at that time, for example, Bob Packwood's famous proposal – to what extent was there real uncertainty as to what ultimate form the Tax Act would have had?

MH: Well, there was a very dramatic moment when a proposal was put forth by Packwood – and I must say off the top of my head I can't remember exactly what it said – but the effect on the market was dramatic and there was actually a point in time where I was sitting in my office, thinking, "Everything's just shut down." It was a very odd feeling. And very quickly Rostenkowski and Packwood issued what they called their joint statement, which gave the market comfort that whatever was done was not going to be done retroactively. So that was an interesting moment in tax reform.

WT: So that mainly had to do with conduit bonds, if I'm not mistaken, the terms of the Tax Reform Act.

MH: Yes.

WT: So could you tell me a little bit about that particular sector of the market, where it was at at that point in time and the overarching effect that it had?

MH: Well, there were many more conduit bond issuers at that time, because it coincided with the changes in what we call private activity bonds. So you had a lot of different kinds of industrial development bonds being used for a variety of kinds of things: you had pollution control bonds, you had quite a number of types of ways that corporations and other private entities could access the tax-exempt market, and they did it through so-called conduit issuers who had basically been set up to do these kinds of financings and enable tax-exempt financing for these private entities. So the '86 Tax Act cut back dramatically on that, and even cut back on the financings that could be done by nonprofits such as universities, so that was one of the main changes that was made to the tax-exempt market as the result of tax reform.

WT: And I also see from your bio that you gave us that you were involved in the very early years of the variable rate demand obligations marketplace.

MH: Yes, that was a very interesting time. Just a year or so after I had started at Mudge Rose, long-term fixed rates were very high – I think back in that time maybe 20 percent, because of inflation – and so bankers, always being creative, decided to develop a way to

do nominally long term debt but with short term interest rates. And that's where they developed the idea that the investor could tender their bond on a certain number of days' notice and be sure that they could get their funds back, because some form of credit enhancement such as a letter of credit was going to ensure payment. And that enabled them to sell the securities to money market funds at rates that were significantly lower than fixed.

Now, bear in mind that at that time a low VRDO rate was considered to be 4 percent. Right now, VRDO rates are at .6 percent, so it's a big change in the market. So, there was a lot of documentation that had to be done, a lot of tax analysis that had to be done in that area, and I worked on a great deal of that. Subsequently, I turned that knowledge into an article for *Tax Notes* that I wrote called "Reissuance Revisited," and it went into all the law that existed at that time on the subject of reissuance. Because, when you're doing a VRDO, you want to know whether there's anything that's occurring that will cause the bonds to be considered to be reissued, which is the equivalent of a current refunding for tax law purposes. If that's the case, then you're subject to whatever law is in effect at the time that the reissuance has occurred.

So, obviously, there was a lot of change in law that was taking place over that period of time. For example, if you'd have issued a VRDO in '84 and it was reissued after the effective date of the Tax Reform Act, you'd be subject to arbitrage rebate, which was something that came in in the '86 Tax Act. So reissuance analysis was very important to the VRDO market.

WT: I know that this was also the time when they had the controversy over the escrow to maturity situation. I don't know if that would have affected your practice at all, because I know it was a very small portion of the marketplace.

MH: Yes. I did not really get involved in any of that at that time. I'm familiar with what you're talking about.

WT: Okay. So why don't we talk a little bit then about how you came to Washington, the Office of the Tax Legislative Counsel, I believe.

MH: Sure.

WT: Unless you have something else you wanted to tell.

MH: No. Just – I returned to Washington, since that's where I'm from.

WT: Of course.

MH: As I said, in '88, one of the reasons that I left Mudge Rose was because their bond business had dropped off dramatically and it wasn't possible to keep us all busy. And I was from Washington, I knew it well and I liked it, and so I approached the Treasury Department. I understood that they were looking for a second person in the Office of the

Tax Legislative Counsel to work on bond matters, so that's why I made the move at that time.

WT: Could you tell me a little bit about the relationship between the tax-exempt municipal securities and all the other different types of tax-exempt bonds and financing that were around at that time?

MH: Well, there may have been certain types of tax preferences, but most of the securities that were tax-exempt were municipal securities. In order to be tax-exempt, it has to be an obligation. So you could, for example, have a tax-exempt bank loan that was not a security. So there's not complete overlap between municipal securities and tax-exempt bonds or obligations, but largely they overlap unless you have something where the tax code says that this kind of bond can be done tax-exempt, but it's not clear whether it's a security or not. There are certain types of student loan obligations; it's not clear whether they're municipal securities or not. And that's true also in the area of some of the tribal bonds. It's true of bank loans that are not securities. But largely, the two terms overlap.

WT: Oh, okay. So things like mortgage financing, for example, would that have come into play or am I just way off track here?

MH: I don't believe –

WT: No? Okay, sorry. All right, so then you were there for a year but then you went to the U.S. House of Representative Committee of Ways and Means?

MH: Yes. Well, I made a short detour, which is so short that I don't typically mention it on my résumé.

WT: Oh, okay.

MH: When I was at the Treasury Department a gentleman named Ben Hartley – who had been on the Joint Tax Committee staff doing bonds for a number of years and had a lot to do with tax reform – he decided to retire. And so I was actually approached to join the Joint Committee Tax staff. I was there one month when the person who was on the Ways and Means majority tax staff who did bonds, a gentleman named Bruce Davie, resigned and I was approached by the majority tax counsel, Janice Mays, to move from Joint Tax to Ways and Means. And I enjoyed that a great deal. Joint Tax is supposed to be more nonpartisan, and I really did enjoy the sort of rough and tumble atmosphere of the Ways and Means Committee.

WT: So you mentioned a couple of things. For example, that you were responsible for drafting the two-year exception to the arbitrage rebate. What is that exactly?

MH: Well one of the things that was part of tax reform was to subject issuers to arbitrage rebate. So, in certain cases, if they earned amounts in excess of their yield on their

bonds, they had to rebate that to the federal government. While I was at the Treasury Department a very onerous set of draft or proposed arbitrage rebate regulations was released. I was not the draftsman, by the way. There was a great deal of pushback on that. Issuers were quite upset. The Treasury Department was actually taking a lot of heat for that.

So over the course of the next couple of years there was an attempt made to sort of minimize the number of situations that would lead to rebate, especially if they were considered to be non-abusive situations. And so, one of them had to do with a situation where you actually could expect that you would draw down your bond proceeds according to a certain schedule over a two-year period. And, in that case, under this exception, you were allowed to keep any arbitrage that you earned, so that was not considered to be an abusive fact pattern, and so even Treasury supported that provision when the Committee adopted it.

WT: I know that the yield burning issue came up only a few years later. Was there any sense of the danger of that at the time?

MH: Well, even when I was at Mudge Rose there was some concern about the pricing on open market securities, and at least in the tax department, a preference for issuers using SLGs as investments rather than open markets. But the extent of the issue was not apparent when I was at Ways and Means. It only came out later on.

WT: Okay. So you were there for about a year. I don't know if we wanted to go through every single different position that you've had, but you did then move back into private law practice after that.

MH: Yes. I was at Ways and Means for a couple of years and through two bills, and there were a couple of things that happened. One is I grew very frustrated with the ability to accomplish anything, and that was years ago when you were in a much more bipartisan environment than the current situation. And the second thing is that the level of compensation at the committee staff level was not very high at all. So for those two reasons I decided I was going to go back into private practice, and I chose a small firm in Washington, which subsequently – almost all but half the people doing bonds decided to leave so there was not enough work for me to do there.

WT: Okay. Was there a close relationship both back at Mudge Rose and your subsequent practice between people who are in tax law and people in, say, bond counsel.

MH: The bond lawyers?

WT: Yes, the bond lawyers in general.

MH: The full firm is referred to as the bond counsel firm, but they have bond lawyers and tax lawyers. Well, that's an interesting question, because they don't always get along.

WT: Right. I was speaking to Dean Pope a few weeks ago and I got it from the bond lawyer side of the equation.

MH: Well, one of the reasons I was made a partner at Mudge Rose was because I knew how to communicate with the bond lawyers, and I would try and get to “yes” if that was the right answer, and I would try and get my comments back to them quickly, and they appreciated both of those things. They sometimes feel like they’ve done so much work to get the business in the first place, and then the tax lawyer comes around at the last minute and just is a naysayer and creates problems for them. That’s not the way that I operated, so I didn’t have that problem. But there’s not always a great relationship between the bond lawyers and the tax lawyers.

WT: Right. What sorts of issues come up in tax law, say, when you’re in your day-to-day work? How does that play out in practice?

MH: Well, you might be asked whether or not it’s possible to do a refunding with a certain structure that might be considered to be aggressive. Remember that 80 percent of what you’re asked to look at is a gray area under the law. Despite all the regulations there are so many unanswered questions, and so the tax lawyer’s being asked to give an unqualified opinion, other than the fact that they have to assume that the issuer will comply, in an area that really isn’t right for unqualified opinions. And so the tax lawyer has to really get comfortable that they don’t think anybody’s going to question their opinion.

And so the bond lawyer's looking at this from the outside and saying, "Well, you can't point to me to anything that says I can't do it, so why can't I do it? We want to do this deal." So, there could be private use in a transaction, and you have to figure out how to allocate it. Can you allocate the private use to the equity, and can you allocate just the bond proceeds to the governmental use? So it's either an arbitrage issue or a private use issue that generates the concern, and sometimes the controversy.

WT: And those are just real main sticking points, then, the ones that come up again and again?

MH: Yes. Those are the two principal areas.

WT: Okay. So, then – and this is where I got my previous question – you had mentioned that you worked on tax-exempt housing finance, the Low Income Housing Tax Credit, that sort of thing, could you explain that a little bit? I think that was what I was trying to get at earlier. I don't know the finer points of it.

MH: Oh, I see. When I was at Treasury, and then again when I was at Ways and Means, I was responsible also for the Low Income Housing Tax Credit. And that's a tax credit, rather than tax exemption, and it depends on how the – there's a lot of overlap, though, between the two because typically you'll be able to issue tax-exempt multifamily housing bonds for a project that also qualifies for the Low Income Housing Tax Credit, and because the rules are very similar, that's the reason I was assigned both of them.

While I was on the committee staff, we substantially rewrote the Low Income Housing Tax Credit. That was an interesting project for me. When I was on the committee I was also responsible for – you basically divided up the tax code five ways, so I was responsible for also tax-exempt organizations, charities, and I was responsible for excise taxes. And the most fun part of my job was that I was responsible for jurisdictional issues. When another committee might try and take up something that was considered really substantively a tax that should have been taken up first by Ways and Means, and if I could identify where those were, then Rostenkowski would go on the floor and challenge it. So I would get to go to the Rules Committee, the Parliamentarian, I'd get to go on the floor with Rostenkowski while he was debating with another committee chair whether they should be allowed to take up legislation. That was actually the most fun part of my job.

WT: So, from your perspective, how knowledgeable, I guess, were the issuers and underwriters with respect to the tax law? Were they heavily reliant upon you, or did they have some sense of what they could and could not do from experience?

MH: It really just varied according to the level of sophistication of the issuer and the underwriter. Some of them were quite well versed in the law. Many of them were not at all, so it was a matter of educating them as to what the rules were.

WT: Yes, I definitely want to talk about practicing in New York City, which we'll go to in a little bit. But I see that you did stop by the Hamilton Securities Group then after that, after Arter Hadden Haynes & Miller.

MH: Right. Well, when I was working at Arter & Hadden and I worked on the Low Income Housing – well, I was working on the Hill and I worked on the Low Income Housing Tax Credit – I got to know a woman named Austin Fitts, who at that time was the Federal Housing Commissioner. And she was interested in the credit, honestly, because it could affect the development of multifamily housing in the country. She also introduced me to one of the largest developers, Jim Rouse, who developed Reston, Virginia; Columbia, Maryland; the Inner Harbor area in Baltimore; a number of communities like that, and they were an investor in the Low Income Housing Tax Credit.

When I went to Arter & Hadden, I actually starting renting the ground floor of Austin's townhouse in Washington and so I got to know her very well, and when it became apparent to me that Arter & Hadden wasn't working out – I mean because a lot of the lawyers were leaving – I talked to her about possibly joining. She at that time had left HUD and started this new firm, which – they called themselves a real-estate investment bank, and had taken on a number of people who used to be with her at Dillon Read, which is where she was before she went to HUD. And I talked to her about joining Hamilton Securities Group as their general counsel.

So, at that time, they were really a small shoestring operation. They were being run out of a rented townhouse in a sort of marginal area of Washington, D.C., just off of 14th Street. After I left she actually developed it into a considerable-size business, but that's how I came to work at that company.

WT: Okay. And I know I mentioned on the phone that I want to talk about what you gained from moving from place to place, because this pattern will continue as we proceed through your career. Was it your experience, then, that basically you were working on many of the same issues from just a different institutional setting as you moved?

MH: That's right. I have been working in the bond business, as you said, since '81. And I've been now in private practice, I've been in federal government – both Treasury, Ways and Means, and we'll see later on, the SEC – and then finally a self-regulatory organization, the MSRB, so I've got that sort of government experience. And then I've also worked in local government for New York City and for three investment banking firms, both either as a banker or as a in-house counsel.

So I have I think a very unique perspective on the municipal bonds sector. It really helps me a lot to understand how somebody from Treasury is going to look at something, or how the SEC is going to perceive a proposal, for example, that SIFMA might want to make. And I understand from the perspective of city government and an issuer what they're looking for. So it really helps me to be able to bring all of those perspectives to my job.

WT: Has it always been your intention to stay somewhere for a little while, or has it just been circumstances that have brought you from place to place?

MH: It's really been circumstances. For example, as I mentioned, after Mudge Rose, which – I really loved working there, but who would have thought that the largest bond firm in the country wasn't going to have enough work to keep people busy, you know, five years after I joined there? What happened is that there are so many firms now that are operating in this space that they don't really always have enough to keep a tax lawyer busy. And then, when you're in a corporate firm, it's very difficult to justify the rates that municipalities are willing to pay, or underwriters can pay for underwriter's counsel, because they don't even approach the levels that the corporate clients are willing to pay.

So I have found myself in a number of situations where the firm has actually closed or they couldn't keep me busy, so that was one of the things that led me, when I was working for – and that's how I wound up at New York City. You know, I had been laid off by Smith Barney. There wasn't enough work to keep me busy there in the sector that I was in.

WT: Smith Barney was in New York.

MH: Yes. And that's why I eventually switched over to doing securities law.

WT: So let's talk about the return to New York, then. What were you doing basically when you came back here? You were heavily involved with New York public financing as a rule, but tell me a little bit about it.

MH: Right. Well when I was at Hamilton Securities we took on the client of Battery Park City Authority, so I started coming back up here to work on that account and I realized how much I missed that whole New York experience, because New York public finance is very different than it is anywhere else in the country. And so I decided that I was going to move back up here, and I knew the people at Smith Barney from the time I was working with them on transactions when I was at Mudge Rose, and a friend of mine was a banker there and they decided to hire me.

And the idea was that I was going to be some sort of a – help them with new product development from a tax standpoint. There was another person at another banking firm that was doing that at the time, and that was the understanding about what the job was going to be. And there was a certain amount of that that went on, but then it became clear to me that they wanted me to be an investment banker, which is not really how I see myself. For one thing, I hate numbers. So that's the reason that that environment didn't work out. I liked working in the investment banking sector, but I didn't want to be an investment banker. That's not what I'm good at, so that's why being in-house, like I am now, is a much better position for me.

WT: But you were supposed to be in-house at Smith Barney, or no?

MH: Oh, no, I wasn't in-house; in-house means that you're functioning as a lawyer.

WT: Oh, okay.

MH: Right. I was actually in the investment banking department, but I didn't see myself as a banker. I saw myself as a resource to the bankers.

WT: So it was a very peculiar position then, as you were trying to explain.

MH: Yes, that's right. And right now I'm a lawyer, and I was at UBS, too, and I give the bankers legal advice.

WT: Right. Okay. So then you started working for the City of New York.

MH: I did. I knew Mark Page, who was at that time the deputy budget director and subsequently became the budget director. I had known him from my days at Mudge Rose, and he was able to get me a position with the City. And I worked first in the corporation counsel's office, but they didn't have me doing municipal securities work, which didn't make much sense. And then he was able to get me a position actually in the Office of Management and Budget as tax counsel. They had never had anybody in that position before.

WT: So tell me about some of the deals that were going on in New York, what was peculiar about them, if anything?

MH: Well they're usually very large, and they have some very creative bankers who are trying to get those accounts, so they tend not to be cookie-cutter deals. They tend to be complex, so it was fun working on them. And I would listen to the proposals that the bankers would bring in and give the City my advice on what I thought of the proposals from a tax standpoint. I would also work with bond counsel, because some of these structures that we wanted to do involved complicated tax analysis and we wanted to make sure that the tax lawyers who were working for the City were going to get comfortable with the legal issues involved.

WT: How closely would you work with, say, people in accounting – or you were actually in the Office of Management and Budget so presumably you're in direct contact with the people who are formulating the budgets for these projects?

MH: Well, yes, but Office of Management and Budget is also responsible for issuing the debt for New York City, and so that's why I was there. I mean, I did know about certain issues concerning budget preparation, but I was principally there because of their debt issuance capacity. They and the New York City comptroller worked together with the issuance of debt for New York City.

WT: Okay. So tell me about some of the projects, then. What were some of the more interesting ones?

MH: Well one of the things that was interesting to me, because it started to shift me away from pure tax – they were always trying to find creative ways to balance the budget and there were a lot of one-shots being done at that particular time. And one of them was that they were going to sell certain tax liens, and so they were going to securitize their property tax liens. And so I worked on one of the first tax lien securitizations in the country, doing the legal work for the City on that. There were a number of different kinds of assets, mortgages that they had that they wanted to sell to Fannie Mae in order to get revenue, so that was actually a pretty interesting part of the job. So, in addition to the bond deals, there were also the issues concerning the sale of the public hospital system. It never happened, but there was a great deal of legal work that went around trying to sell the public hospital system at one point, privatize it.

WT: And you were talking a little bit about some of the more complex structures of these deals. I'm wondering if you can go a little bit into detail as to what that was. I mean, maybe you were discussing it a little bit just now with the tax liens.

MH: You know, I can't really remember off the top of my head. I didn't have a chance to think about that. But, you know, they were generally advance refunding and arbitrage issues that were involved. But there was some private use issues involved as well after the Tax Reform Act, because there was this provision in the code that says that you can't

have more than 5 percent unrelated or disproportionate use, private use, so if you've got bond proceeds, one general obligation bond issued by New York City – which might be a billion dollars in size or maybe even more than that – was going to be used for a number of projects throughout the city. And so there had to be a system developed for trying to keep track of where the private use was so that you could make sure that you didn't run afoul of this rule. So we spent a good bit of time trying to develop a system for doing that while I was there. But, in many cases, the complexity really arose because they have such a large debt portfolio, and there are limits on how many times something can be advance refunded, so they were always trying to figure out, okay, exactly what bonds are out there and what advance refunding opportunities are there. That's a big part of the analysis that anyone who's banking in New York City has to be able to do.

WT: Now, of course, I was talking the other day with Kit Taylor about New York City financing in the 1970s, and of course how opaque it was, and how nobody knew what was going on. And it sounds like by this time it had become a completely different world.

MH: Oh, absolutely.

WT: That everyone was extremely adept at recordkeeping and the accounting...

MH: Oh, and the disclosure was great.

WT: So you were there for a couple of years, I suppose.

MH: Yes.

WT: And then it was back into private practice?

MH: That's right, and it was at O'Melveny, and I was working actually with a group of bankers that were originally at Mudge Rose. Mudge Rose self-destructed in about 1988 and a number of the partners who worked there went to O'Melveny, including Bob Ferdon, who had at one point run Mudge Rose and had a good public power practice. So I was spending a lot of my time at O'Melveny doing the tax work for large public power financings. One of the things I did there, which is one of the hardest deals I ever worked on, was total debt restructuring of Nebraska Public Power District. That was very complex work because not only did we have the tax issues, but considerable private use issues.

WT: So where do you think we should go? I don't want to just go straight down your résumé necessarily.

MH: Oh, I mean, I think it might be interesting to talk about my time at the SEC and the MSRB.

WT: Okay. So you were at Torys for a little while after that, and then eventually you did get to the Office of Municipal Securities. This was just after the office had shifted into Market Reg, if I'm not mistaken.

MH: That's right. When it was created Chairman Levitt created it as an independent Office of Municipal Securities and Paul Maco ran it. After Levitt left, it was merged into Trading and Markets – at that time called Market Regulation, I believe – and then Martha Haines ran the group. And there were only four of us in the office. I was an attorney advisor, so it was not a permanent position, and I was brought on because Martha wanted to evaluate the whole continuing disclosure regime in 15c2-12. And what I ended up doing was to evaluate the efficacy of the NRMSIR system - let's see if I can remember the acronym, Nationally Recognized Municipal Securities Information Repositories. So that was not what I had hoped I would end up doing, and it's not what Martha had hoped that I would end up doing, but apparently at that particular point in time there was not really throughout the division a willingness to reconsider the entire rule.

WT: Yes, I was speaking with Martha several weeks ago now, and she was mentioning that really her goal was to get what eventually became the EMMA system. Had you had much experience with the NRMSIR system before, or was that something that was new to you?

MH: No, that was something that was new to me.

WT: Okay. And how did you end up moving over there to the SEC in the first place?

MH: Well, Torys decided to go out of the muni business. When I went there in the first place there was a whole group of people doing public finance, and then a lot of them did work with Fannie Mae and Freddie Mac, representing them as a credit facility provider, and they decided that they were going to move to Arent Fox. And so Torys allowed me and another lawyer to continue on for a while to see if we could create another bond practice there, but it was never reaching the level that they were interested in. So, I realized that that was happening and I approached Martha about a position at the SEC.

WT: And so was that the entirety, then, of what you did, the NRMSIR system, or were there other issues that you were working on?

MH: Well, there were some other issues. I worked at one point with the FBI on some investigation of a couple of characters in the bond area. And I worked on the no-action letter that they provided to DAC, Digital Assurance Certification, for their system. But largely what I did was related to the NRMSIR project.

WT: And how did you leave that then, because I know it was some years before that was ultimately reformed.

MH: Well, I did – I wasn't allowed to call it a study because apparently it wasn't broad enough in its scope, but we selected a number of issuers and obligors that we wanted to check

their continuing disclosure compliance, and we wanted to see whether we could find the documents with the NRMSIRs. And we selected them based on type of obligor, location throughout the United States, size of issuer, et cetera. And then I went to each of the NRMSIRs, trying to see if I could find the continuing disclosure filings for all of these obligors, and the performance really varied dramatically. Only two of them could be searched electronically, Bloomberg and DPC DATA, and two of them only kept paper copies. So they were actually getting the filings, but they were only using it for purposes of a business of theirs where they were going to take the data and sell it to people. So that was S&P and Interactive Data.

WT: So how did it work? Would you just call them up then to get the disclosure information?

MH: I went over to their offices. And, for example, at FT Interactive, when I was looking for something involving the state of Colorado, we finally found it in the Vermont file. And, as I said at one of the conferences I had to speak at, I guess they thought that skiing was the common element so they had put them in the same file. So it was pretty clear that the NRMSIR system was not a very effective continuing disclosure system.

WT: I forget if it was in this precise context, but Martha said that when they tried to – maybe it was when you tried to determine whether the disclosure had been done properly, that there were actually no cases where they were completely proper.

MH: That's right.

WT: That seemed excessive, so you had to kind of reel it back a little in discussing the gravity of the problem.

MH: Well, I mean, you know, sometimes it was the fault of the issuer that we just couldn't find it, and they swore that they had filed it. Or they submitted their official statement and they didn't bother to link it to their continuing disclosure obligation, so it wasn't clear that they had filed anything. There were a number of reasons, and there were a whole host of them. And from the State of Massachusetts to some little multifamily housing deal in California, I mean there were all sorts of different kinds of obligors that we looked at. But between the NRMSIR systems not necessarily having everything and the issuers not filing everything, it was not a pretty picture.

WT: So did you consider staying in Washington? I know that this was always a temporary position, the attorney fellow position.

MH: It was temporary. I mean I had gone there because, you know, if you think about it, over the course of my career I've been at firms where their muni business is not doing all that well and I wind up going into government. That happened when I was at Mudge Rose, then I went to the Treasury Department. And go back to New York, that firm not doing well, go back to government, this time at the SEC. And then I go back to New York and I eventually wind up at UBS. Who would have thought that UBS would go out of the public finance business, but they did so I go to the MSRB. So it's been a pattern in my

career, but it's served me quite well and I gained a great deal of invaluable experience in the process, but that's sort of how I wound up making this move back and forth between New York and Washington over the years.

WT: Is there anything we should discuss of your time at Winston & Strawn, which is between the SEC and UBS?

MH: Well, that's an example of when I said before that it's very difficult to have a municipal bond practice in a corporate law firm. I developed quite a number of my own clients when I was there. I was hired to do tax, but I also developed a lot of underwriter's counsel clients. And also NYU was my client. I mean, I developed a number of clients on my own, and I was working very hard. I mean, I was working six or seven days a week on a regular basis to get all the documents produced that I was responsible for. Yet, it looked like I wasn't working that hard because I couldn't charge my regular hourly rate, and I had a cap on my fee in almost every assignment. And yet, Winston & Strawn didn't want me to input my entire time and then write it off, so I was kind of caught between a rock and a hard place. And it just wasn't a viable business model for me to be in that situation, where I'm working so hard and not getting full credit for it.

So I was doing a good bit of work for UBS at the time, and I had a good friend who I had known for a long time who was at UBS and I knew the head of the public finance department very well and she found out that they had an opening at UBS in the legal

department, and they actually invited me to come over there and interview for the position.

WT: And I know you mentioned on the phone that you didn't really overlap very much at all with the people there who were recently accused of bid rigging, so I guess my question on that is, in a very large firm of that kind, speaking in generalities, how easy or difficult is it for people who want to engage in illicit activities to do that sort of thing?

MH: Well, you know, it's always the case that the larger the firm, the more potential for not spotting something from a legal and compliance standpoint. And I think that that certainly was true of UBS, because we certainly had plenty of lawyers and compliance people, but if someone's determined to violate the rules and they know that they're violating the rules, they find a way to cover it up. But I'm sure UBS is not unique. I mean, there are plenty of cases brought against –

WT: Yes, we've seen Morgan, for example, very recently.

MH: And J. P. Morgan. But each firm, especially when you get large, is susceptible to that and so it becomes more difficult to monitor behavior from a legal and compliance standpoint. And one thing I like about where I am now at Jefferies is it's a much more manageable-size group, and I'm very comfortable with the attitude of the people in the public finance department about the necessity to follow the rules.

WT: So tell me about some of the things that went on at UBS. I know you mentioned that the auction-rate securities became an issue at that time.

MH: Yes, I spent a great deal of my time dealing with auction-rate securities. First of all, I was asked to work on the model disclosure language that SIFMA was preparing to be used in auction-rate securities deals. And so, once that had been adopted, UBS decided that they were going to roll it out and the student loan group decided to be the first group to use it. And so I worked extensively with the student loan group, which was quite large. It was probably – you know, Citi and UBS were the two largest underwriters of student loan bonds in the country and we had about 60 percent of the market share. So I worked with these bankers to get the disclosure adopted in the deals, and that was a time consuming process. And other issues that I spotted that had to do with the student loan structures, I worked on those. And then I was also working very heavily with the desk to make sure that the procedures were implemented by the desk, the short-term desk, and I also worked heavily on VRDO issues as well.

And so when the firm decided to let auctions fail rather than buy them in, and then only a couple of months thereafter they decided to close the public finance department, I was asked to stay on for a period of time because they still had to deal with a lot of legal issues associated. They were asked by the SEC to buy back – they already owned about \$10 billion of the securities that they had taken into inventory before the fails, and then they were asked to buy back another \$20 billion, so obviously there were a lot of legal

issues surrounding all of that. So I was very much involved with auction-rate securities, particularly student loan auction-rate securities.

WT: Did they have to do with the 529 system, the student loans, or was that just entirely separate?

MH: No, these were securities that were issued by state issuers, and then they would use the proceeds to make loans to students. And then the loan payments back would be the security for the bonds.

WT: So why don't we then come to your time at the MSRB, which is probably the central thing that we're interested in. Of course, we want your entire career.

MH: So, it's all leading up to that, really. Well, in a sense it is, because the experience that I gained at all those places was incredibly relevant to my job at the MSRB. I knew Lynnette Kelly, who is executive director of the MSRB, from her days at SIFMA. And when I realized that UBS was likely to be closing, I came down to Washington to see if I could explore some different possible job opportunities, and I had lunch with her, and she told me that they were going to be hiring a number of attorneys. And I said, "Well, I wish you would consider me." So I interviewed, and right around the same time that I was interviewing I was asked by UBS to stay on for a while. So I initially said to the MSRB, "Look, I can't take this job at this point. I want to stay on with UBS for a while."

The situation became very difficult at UBS, and I finally called them up and I said, “Is this job still open?” So they offered me the job, and I started as an associate general counsel, and I eventually became the general counsel for market regulation. And, I mean, I didn’t handle internal legal matters, but I handled all the rulemaking, professional responsibility, assistance with enforcement efforts by FINRA, et cetera, those were all my responsibilities.

And the level of experience that I brought to the job – in how the market operated, how investment banking firms work, what issuers think – was invaluable to that position. And it was a very grueling job. During the time I was there, the MSRB was given responsibility in Dodd-Frank for the regulation of municipal advisors, and I was at that time deputy general counsel and I was asked to write the rules for municipal advisors. And, after I stopped hyperventilating, I set about doing that, and I was working seventy or eighty hours a week consistently for about a year and a half during that process. I think we did a very good job.

WT: Tell me about some of the difficulties that you encountered. I suppose that many of them had to do with the definition of who a municipal advisor is. I was just speaking to Leslie Norwood about this a few hours ago.

MH: Well, that was a very frustrating part of it. We were trying to write rules without a definition from the SEC. And we had a proposed rule which had generated a lot of controversy, so we weren’t sure, of all the parties that were potentially going to be

municipal advisors, exactly which ones would end up being municipal advisors. So we were trying to write rules in that kind of an environment. So the first approach we took and approached the SEC on was to say, “Look, we certainly know that financial advisors are going to be considered to be municipal advisors. Let us write rules for financial advisors, and then, once you figure out who else might be in this category, we’ll come back and either amend those rules or add new rules for other types of advisors.” And they didn’t like that approach. So they said, no, we had to write rules for all municipal advisors. So I said, “What am I going to do here?”

So then I went back and I looked at their proposed rule, and I said okay, if everybody who could conceivably be a municipal advisor under that proposed rule were a municipal advisor what, if any, changes would I make to these rules? So I tinkered a little bit with the fiduciary duty rule to craft a rule for brokers, because I thought that they needed to be treated slightly differently. And so I looked at everything from different perspectives. And the board approved a whole set of rules. And this was only a year since I had been given the assignment to write these rules, and we filed them with the SEC in August of 2011, after which we were promptly told that we were front-running the SEC. It was suggested that we might want to refile our rules at a point in time after they definitely had adopted their rule, and people would know that they definitely should pay attention to the comment period and comment.

So, all those rules were withdrawn. That was one of the more frustrating experiences for me, after I had done all that work. And for the board as well, because they had had two

additional board meetings that year just to handle the volume of rulemaking that was going on. Another thing that I spent a great deal of time on when I was there was G-17, and a notice that was eventually published in May of 2012 on the duties that underwriters owe to issuers of municipal securities. I spent about three years working on that, and I'm very proud of that.

WT: G-17 is the very general one, right?

MH: G-17 itself is a very simple rule, it's only about two sentences, but this was an interpretive notice that for the first time really talked about how G-17 governed duties owed to issuers. There was plenty of guidance prior to that time on duties owed to investors, but this was the first time there was any extensive guidance on duties owed to issuers.

WT: Well, that was because Dodd-Frank specifically instructed MSRB to begin guarding the interests of issuers?

MH: Well, ultimately that's what pushed it over the finish line, but it's something that I started working on prior to Dodd-Frank's adoption. I thought it was an important area. The other thing I spent a great deal of time on there was working on the rules to govern broker's brokers. Are you familiar with the broker's broker and their role?

WT: I am, but for the recording, why don't you –

MH: Well they are an intermediary, so that if you buy a bond and you're interested in subsequently selling it, you're likely to go back to the broker that sold it to you and say, "I'd like to sell it." They may or may not be willing to just buy it directly from you, depending upon their appetite for holding that bond, their level of capital. If they're not interested in buying it directly back from you and just holding it until they can eventually sell it, they will ask the broker's broker who they deal with to get bids from other brokers or traders who might be interested in buying it. They will, so-called, put it out for bid in a bid-wanted process, and that's the principal use of broker's brokers.

But if you are a large enough investor and you don't want to just put it out for this bidding process, you will conduct what's called an offering. So if you're Fidelity, for example, you'll go to the brokerage firm and you'll say, "I want to offer these for sale, and this is what I think that they're worth." So in an offering you have a larger amount, you have an idea of what you want, what price you think is acceptable, and then there's more or less a negotiation that goes on as to what the price will be. As opposed to a bid-wanted, where you don't really necessarily know what it's worth and you just get bids from a variety of brokers.

And there had been a number of abuses in this whole area of broker's brokers over the years, and FINRA and the SEC had indicated to the MSRB that they wanted the MSRB to write rules to govern the conduct of broker's brokers. So it was another area where I knew nothing about broker's brokers, but after three years of working with people in the

industry I learned a lot about their business. And I think that they were pretty pleased with the work product that eventually came out.

WT: So tell me a little bit about the process of interaction with the different agencies, organizations, and so forth. Of course we've talked about the SEC, you've mentioned that you were in contact with the CFTC, of course there's FINRA; you also mentioned the Federal Reserve Board, Comptroller of the Currency, et cetera, et cetera, so how did these interactions take place?

MH: Okay, well the MSRB writes rules but doesn't enforce them, so the rules are, depending upon whether if it's a broker-dealer firm, then FINRA is the principal enforcement agency; but of course the SEC could enforce as well; and if it's a bank, not a broker-dealer, then FINRA's not involved and it would be either the Fed, the Comptroller of the Currency, or FDIC, depending upon whether it's a national bank, a regional bank, and the size of the bank. And don't ask me to explain what – I know that the Office of Comptroller of the Currency enforces against the largest banks in the country, the national ones, the big ones, and of course the SEC has a role to play as well.

So there was interaction with these enforcement agencies, and when FINRA in particular was developing a risk-based exam program for broker-dealers that I was involved in the initial stages of, and having just recently gone through one of those exams from here. Then another reason I would interact with the SEC is of course because of the rulemaking process. They had to approve the MSRB rules in order for them to become law. And so

my posture was that I wanted to let them know what we were working on, get their feedback early on, so that I didn't develop a rule and go all the way through the rulemaking process and then find out that they weren't comfortable with it. So I instigated monthly meetings with the SEC to discuss what we were working on and try and get some sort of feedback from them.

WT: So, shall we discuss anything else or shall we just move towards the current point of your career?

MH: Well, yes, why don't we just talk about where I am now? As I said, I went to the MSRB because UBS folded, and although I very much appreciated the opportunity to work at the MSRB and the experience it gave me, I still continued to want to be back in New York. I had never even really given up my New York apartment when I was down there. And so I was thinking about various career paths for me, ultimately.

WT: Did it continue to be that extraordinary amount of work all the way through?

MH: Yes. And I liked working with the board members tremendously, but I knew that I didn't want to stay there with that kind of workload on a permanent basis. It was very grueling. So I considered a number of opportunities, and I approached Ken Gibbs, who runs public finance at Jefferies. He's somebody I've known ever since I first started my career. On one of my very first bond deals, Ken and I met, and he was at Kidder Peabody at the time

and I liked him a lot and I appreciated his sense of ethics. And we had a number of discussions and ultimately I was made an offer by Jefferies to come in-house.

I'm the only attorney here responsible for all the issues that concern the entire municipal securities group. That includes not only the bankers, but also the sales and trading and underwriting, and I really enjoy working with all those different groups, very different personalities and ways of approaching issues. I very much enjoy working with our general counsel, whom I report to. And I pretty much make my decisions about what needs to be done with not a great deal of supervision. You know, it's there if I need it. So it's a very good working environment for me, and I enjoy it tremendously.

WT: Okay. Well unless you have anything else you wanted to add in general about your career, I suppose we can wrap up.

MH: No. The only thing to say is I'm sure I'm still learning. I'm always reminded, even after all the things that I've learned before, there's always more to learn and I continue to learn, which is another reason that I like what I'm doing.

WT: All right, well thank you very much for sharing your very unique perspective on the municipal securities market and its regulation.

MH: You're welcome.

WT: Thank you.

[End]