Securities and Exchange Commission Historical Society
Interview with John Ramsay
Conducted on June 7, 2017 by Kenneth Durr

KD: This is an interview with John Ramsay for the SEC Historical Society's Virtual Museum and Archive of the History of Financial Regulation. I'm Ken Durr. Today is June 7, 2017, and we are in New York City. First off, thank you very much for taking some time to talk.

JR: Thank you for inviting me. I'm flattered.

KD: I want to start with your education, just the basics. Where did you go to school?

JR: Sure. So I went to two state schools. I went to the University of Texas in Austin, grew up in Houston. So I stayed in Texas for that. And I went to law school at the University of Michigan. So that was the first time I had really spent a significant amount of time outside the state. And then returned to Texas for my first job out of law school with a law firm, and then made my break for D.C.

KD: Was that Akin Gump, the first law firm?

JR: It was. Yes.

KD: Did you get into securities at that point?

JR: I did. I was interested in – securities regulation and securities work was part of what attracted me. So I worked on corporate deals and some securities offerings while I was there. But it was towards the end of my time at Akin Gump that we were in the middle of the savings and loan crisis and collapse. So in some ways, I think that that really prompted me to think for the first time about the impact of regulatory policy on stuff happening in people's lives and broader events. So it got me to thinking about the possibility of public service, really, for the first time, and that's what really drew me to the Commission. And 1989 was the first time that I ventured north.

KD: Did you just apply? Did you know somebody? How did that work?

JR: I really didn't know anybody. I went online and I applied everyplace that I could think of that I thought might be interesting. Because of my corporate offering experience, I thought the most logical place might be Corp Fin. But after I interviewed with Bob Colby and other folks in Market Regulation at the time, I was really interested in what they were doing, I really liked the people personally, so that's where I wound up.

KD: And you got into debt instruments pretty quickly, right?

JR: I did. It was a whole mishmash of things, but I think early on, we spent a lot of time working on penny stock fraud rules, since that was kind of the early cause célèbre. There was a lot of stuff in the press about that. Recent legislation had given the agency more authority. So, a group of us, in Bob Colby's office, spent a lot of time working on those rules. And then I got acquainted with fixed-income markets at the same time in both corporate and municipal bonds, and learned whatever I could at that point about what was going on in those markets. And then derivatives were an area that was, both in terms of their impact on the markets and regulatory policy, were getting increasing focus and attention. So I was there at a time when people were really starting to grapple in serious ways about the proliferation of derivatives and how they were being used and what impact that might have in terms of regulatory policy.

KD: What were you doing in Market Reg, just keeping an eye on derivatives at this point?

JR: Well, yes. We were mostly thinking about what regulatory responses might be, trying to stay current in terms of developments in the market. And then at the time that I started working for Mary Schapiro, because it was a focus of hers also, there was much more focus on initially volunteer initiatives. So the regulators are putting pressure on participants to develop, in consultation with the regulators, some kind of voluntary standards for private sector entities to follow in terms of risk management, in disclosure, transparency of derivatives. So that continued for a substantial period of time.

And part of my early experience at the Commission was also getting interested in and involved in regulatory policy, but my relationship with people there was just as important, I think. I had the privilege to be able to get to know, both mentors and examples of public spirited-minded people, from Mary Schapiro and Elisse Walter and Rick Ketchum and Bob Colby, Arthur Levitt. These were all people that I got to work closely with. So I think they are as responsible as anything else for solidifying my interest in policy issues and public service in general. It's an extraordinary group of people to have the opportunity to work closely with fairly early in my career.

KD: So that's what kept you going.

JR: Absolutely. It certainly kept me interested and wanting to continue to be a part of it.

KD: So at this period when you were with the SEC, you were involved in a lot of municipal market stuff.

JR: I was involved in some municipal market stuff. So fixed income markups were an issue that continued to be a focus for a long period of time. Pay-to-play practices grew to be a focus before I left, partly because of the insistence of Arthur Levitt that this was something that had to be addressed. And the thing that I agreed with – that I admired about his approach is, in this area and others, he was very effective about using the SEC chairman bully pulpit and, frankly, using the press and public communications to put pressure on market participants to align their conduct with a higher set of standards. So, well before Rule G-37 and all of that came into play, the practice was changing, in large part because he insisted that it happen, and effectively used his position to make sure that it happened.

KD: Another big thing happening in the muni market is 15c2-12, where essentially – it's a real interesting maneuver in which the regulators can't ask the issuers for the information –

JR: Yes.

KD: – so they ask the broker-dealers. I would think that given the newness of that and the fact that it's a little complex, that would have involved some –

JR: Yes, and I spent a fair amount of time with that, too. Frankly, I always felt like that particular regulatory approach left the Commission awfully hamstrung in terms of what it could really insist upon, because you're basically trying to use intermediaries to coerce better disclosure and practices on behalf of issuers. And it seems to me that's always a hard thing to really do. So I think the Commission did what it could, and I think that particular rule was helpful, but it always felt like kind of a half-measure to me. It always felt like at the end of the day what really mattered most was whether municipal issuers themselves felt like they were on the line and threatened enough to really coerce better practices in terms of disclosure, or in some cases enforcement actions, which eventually happened.

KD: So was Market Reg thinking about other solutions, other ways to approach this problem?

JR: Well, thinking about it, the problem is that you're always limited by whatever the legislative authority is, and as long as the Tower Amendment was in place and there was a clear limitation on your ability to get at the issuers directly. But I think, certainly, Elisse Walter and people on her team were very effective at making an outreach to the municipal issuer community in a productive way, to encourage different standards of disclosure. So in the fixed income area, generally, it always felt like we were trying to drag the fixed income markets really into the twentieth century, let alone the twenty-first later on, because at the same time that all of this very dynamic change was happening in the equity markets, both in terms of technology and competition and the number of different kinds of players, bond markets remained relatively static. So the natural evolutionary factors that were changing everything on the equity side just didn't happen organically in the same way. So the regulatory challenge was to prod some of that change as much as you could, recognizing that there are obviously big differences among the various types of markets.

KD: And you got the MSRB to kind of work through as well, right?

JR: Right. I spent a lot of the time on the fixed income side, too, working in the legislative arena on reform of the government securities market. This is after the Salomon Brothers bond trading scandal. So that got me exposure to the legislative process and how Congress works, as much as anybody can understand how Congress works. But it was fascinating for me, and I thoroughly enjoyed it. And we ended up having an impact, a positive impact, I think, on the legislation that was eventually written.

KD: What was the legislation?

JR: So the Government Securities Act Amendments, as I recall, the original legislation was adopted in 1986. So this was, I think, in '93, if I'm remembering correctly, amendments to that legislation in order to provide for some greater anti-fraud authority, some greater transparency or authority for transparency in the government markets. I worked very closely with Caite McGuire, who was heavily involved in various legislative initiatives that the Commission was interested in at that point.

KD: And you talked a little bit about yield burning – back there was the issue of markups.

JR: It was, although not a topic that I had a lot of direct involvement in. I sort of understood what it meant and how it worked for brief stretches of time, and then, maybe fortunately, I didn't have to bore down that deeply into it.

KD: But the way it worked in Market Reg, did you pretty much get into the corner where you're generally working with fixed income stuff?

JR: I mean, it was sort of whatever was – so in Bob Colby's office, as the chief counsel's office, we had the ability to get involved in a variety of things that the division was working on. And I quickly became his deputy chief counsel. So for the first time, really, in my career I was responsible for a team of people and managing them. So that required me to develop those muscles. But it's something that I enjoyed a lot. And part of it was just a happy circumstance that I had such terrific people, at that time, to be working with.

So we had the ability to work on a lot of different things. I think I worked a lot on fixed income issues at that point just because that was a lot of the focus at the time in Market Reg that other people weren't already focused on.

The electronic trading revolution and all of that was something that was clearly ongoing and consuming a lot of energy and attention in the Office of Market Supervision, if that's what it was called at the time. So there was, in some respect, more room for me to maneuver and more things that I could be engaged in on the fixed income side. But I was certainly involved in and aware of what was happening in the electronic trading revolution at that time.

KD: So this is working with the New York Stock Exchange, for example, and NASDAQ?

JR: Yes. Early on, reacting to product changes and new methods of electronic trading, and trying to understand how those were impacting the market. It was only later that the Commission really started responding strongly in a regulatory way with the Order-Handling Rules and Regulation ATS and all of that. But I think people were certainly aware of those changes that were in transit at the time.

KD: The New York Stock Exchange got DOT and SuperDOT. Was that going through at that time?

JR: There was that going on, yes, absolutely, and just new means of electronic communication and electronic trading. Probably even that early, I think there were reasonable questions about what was going to happen to the New York Floor, long term, because it seemed to many of us that anything meaningful that you could do on the floor, you could probably do, maybe more efficiently, through electronic systems. So the Exchange was in denial about that for a long period of time, of course.

KD: Now, the NASDAQ, on the other hand, is moving. Was it the Small Order Execution System up at that point?

JR: Yes, and the SOES bandits and all of that. I forget exactly when that became a very hot topic. I think maybe by that point I had already started working for Mary Schapiro, and so the portfolio of things that I looked at just became much broader at that point.

KD: Yes. So that shift, you went from Market Reg to, was it general counsel to the commissioner?

JR: So, from deputy chief counsel of the Division of Market Regulation to becoming a counselor to Mary Schapiro. Originally, I started working for her as an interim measure when Mary became acting chair, after Richard Breeden had departed. And I ended up staying with her after Arthur Levitt came on board, and I continued to follow her for some period of time after that. So that was the first time where I really had the ability to get a big-picture view of all of the things that the Commission was involved in, from authorizing enforcement procedures, to changes in the corporate finance markets, investment management, kind of the whole ball of wax.

KD: Was it flavor-of-the-month, whatever was an issue you would have to dig in and get up to speed?

JR: Yes. I mean, it was all very largely circumstantial, depending on whatever was actually bubbling up from the staff. And then, of course, commissioners themselves – I think Mary was proactive in trying to push attention on derivatives, was one part of it. Another area of focus was international regulation. It was really in that period, and in some measure through Mary's efforts, that there was an increasing focus on and use of IOSCO. So the evolution of the Commission's place as a driving force of international regulation was a very important factor at that point. So that gave me the ability to look at the big picture. Not only big picture domestically, but how is what we're doing impacting foreign markets and vice versa?

KD: Yes, I noticed you wrote an academic article about it.

JR: I did. I did, about Rule 15a-6.

KD: I was interested in what the motivation was for that.

JR: Well, it was actually after I joined the Bond Market Association. Really, the motivation was, it was something that I had some experience with at the Commission, but Paul Saltzman, who I was working for at the time, said, "Somebody has asked me if I would work on this. Will you work on it with me?" And then quickly, Paul found other things to do. So I ended up being, I don't mean to say saddled with it, because it turned out to be an interesting thing, but at that point, once I put all that work into it, I sure as hell wasn't going to give him credit for it.

KD: I've had similar experiences.

JR: Yes.

KD: So let's go back and take you to the next step. Did you follow Mary Schapiro to the CFTC?

JR: I did. Yes. I adored her and still do. So she was given the chance to become chair of the CFTC at an important point in its history, and I had the chance to follow her and really become much more involved in the legislative process. So I headed up her Legislative Affairs Office and also became very much involved in helping to formulate an over-the-counter derivatives policy for the CFTC. Since I had already developed a portfolio of interest in derivatives regulation anyway, it was a way of getting right into the thick of that. So part of it is through the CFTC's own efforts around OTC derivatives, and part of it is as a member of the President's Working Group on Financial Markets it's what was the precursor to FSOC as a cross-agency discussion and coordination around how to deal with those issues.

KD: What was the derivatives market like at this point? What were the products that were being sold? What were the things that you were most interested in or concerned about?

JR: Well, so there was the whole spectrum. Of course, it was a narrower range of products, but in the over-the-counter markets, there were various kinds of – so you had things like inverse floaters and various kinds of leveraged instruments, people using derivatives in order to accomplish leverage in ways that they had not done before.

KD: Who would have been doing that?

JR: So large banks, certainly, most primarily. So the challenge, from a regulatory perspective, was that the large banks became very heavily invested in this area of business and in growing the range of products that they were offering. So there was a lot of discussion about it. But I think the CFTC was limited in how much they could actually do about it, something that Brooksley Born subsequently came to know. So the lesson I took away from that was, as a regulator, it may not matter how much potential authority you have over a particular area, because the CFTC had enormous theoretical authority to impact the over-the-counter derivatives markets, but was severely constrained politically by the amount that they could actually do.

Part of that is because the large banks themselves pushed back hard, but so did the bank regulators. It was a time when the banking regulators were very skeptical of any efforts by the securities or futures regulators from kind of playing in their sandbox or doing things that impacted institutions that they viewed as their responsibility. I don't know, I think we were only at the CFTC for a year and a half or some relatively short period of time. But we managed to get a five-year reauthorization for the CFTC, first time that it happened in a very long time. And to be there at a time with the Gingrich revolution and people and agencies being severely cut, to actually get an increase in funding was an accomplishment.

I certainly wouldn't speak for Mary, but I was very conscious of the practical limits of the ability to take regulatory action, even if the statute said you had the ability to do it. I think regulators still rely on some wellspring of political goodwill. And particularly if you're relying on Congress for annual appropriations, you certainly are reliant on it, as a practical matter.

KD: So did Congress actually intervene or would you just get a friendly phone call from a legislator saying, "The bank regulators have got this. Don't worry about it," et cetera, et cetera?

JR: Well, I mean you had Gramm-Leach-Bliley, which ultimately – I don't recall particular legislators trying to intervene on specific regulatory matters. I do recall banking regulators raising concerns about particularly the use of enforcement authority, because I think the view was that if there were problems to be dealt with, they should be dealt with behind closed doors. But you didn't want it to be public, because that – and it's just a difference – it's an historical difference in how banking and securities regulators operate. I think, traditionally, if a bank regulator doesn't like what you're doing, they sort of drag you into a back room with the rubber hoses and figure out how to make you cooperate. And securities regulators are much more inclined to shame people in the middle of a public square. So it's just, it's a very different mindset.

KD: Yes. Well, the bank regulators don't want to undermine the faith in the banks.

JR: Right, and understandably. But the other side of that is if banks are doing things that have real world impact on consumers, then they need to be accountable for it.

KD: Now, you were in the Working Group on Financial Markets, you mentioned.

JR: So I helped to support Mary as a staff person as a member of that organization. So she was the CFTC representative on that group, which was a much smaller group of people than FSOC is now. It was basically the Fed, the SEC, the CFTC. I guess the comptroller of the currency maybe was part of that, and Treasury. And that may have been it. But it was a relatively small club.

KD: And how much of the agenda was looking back and sort of taking stock – looking at what had happened? I know it came out of the '87 market break.

JR: Yes.

KD: So how much of it was looking back, and how much of it was looking forward, like FSOC would be today, of heading off catastrophes?

JR: I think most of it was forward-looking, and also to look at what was happening at the moment, and to have a forum where the regulators could discuss among themselves how to approach this thing. So, for example, one of the issues in the derivatives space was Orange County and the losses they took because of derivatives that had been sold. And also Bankers Trust was another case where there were real world impacts on real live people because of the sales of certain kinds of derivative products. So you need to have some kind of forum away from the spotlight to be able to discuss those issues and how to grapple with them.

KD: So this would have been a place where Mary would have spoken with the bank regulators, right?

JR: Yes. And she would be speaking with them more regularly than that, obviously, but that provided a forum for everybody to discuss those issues together, really, sort of in the same way that the FSOC is intended to do now. It's just that FSOC is a much bigger, and many would say kind of more unwieldy vehicle for doing it.

KD: So NASD regulation, this is a pretty exciting time to come into this.

JR: Yes. Right. So it was also a unique time to make a switch. So Mary was the first head of the new NASD regulatory entity that was created in the wake of the market maker price-fixing – if that's the right word – scandal.

KD: The odd eighths.

JR: Yes, exactly, the odd eighths and pieces of silver, whatever it was that lay behind all of those conventions.

KD: But you're coming in in a moment where you can build something new.

JR: Yes, absolutely. So it was exciting from that standpoint, because the NASD, in terms of its regulatory function, was newly energized and was given an important mandate. And Mary was given responsibility for that. So it's exciting to be a part of that. I was responsible for basically the group that wrote NASD rules on most topics in the General Counsel's office. So the Order Audit Trail System, I basically wrote those rules in close consultation with SEC staff, because they were exerting a lot of pressure to be able to do that. So part of that was recognizing the changes in electronic trading, but then trying to keep pace from a regulatory perspective, adapting the regulatory tools to be able to use technology as a regulator, as well, too. So OATS was a big part of that.

One of the things I recommended and started was putting interpretive letters that the NASD would issue on various topics onto the website, so that there was the development of some kind of body of administrative law around development of positions, that it always happened in the enforcement context, to a certain extent, but for the staff to be able to issue interpretive positions in a way that other people could benefit from. So part of the change at the NASD was being – was fulfilling the significant new regulatory mandate, and part of it was becoming more responsible and accountable, as an institution, to investors and to a wider group of constituents.

And much of it was about, again, keeping pace with the change in the way that not just business was being conducted, but the way that people were communicating with each other. So there was a lot of focus at the time on, how do you deal with email communications or other types of communications from a supervisory standpoint? How comprehensive a system do you need to be able to survey all those kinds of things? How can you have a credible system for overseeing what people are saying to their customers that just doesn't become unworkable as a practical matter?

I remember, early on – I don't remember where in my tenure. It was probably towards the end of the time of the NASD regulation. The founders of Yahoo came in to talk to Mary about what they were building and how it could impact communications. And, of course, from our standpoint, we were also concerned about how to keep yours arms around all of this stuff, because if people can communicate on all kinds of other topics, they can certainly use it to communicate about selling stocks or offering stocks. So it was interesting to follow that at the inception of many of those developments.

KD: So on one hand, you're talking about beefing up the electronic capabilities of the NASD Reg.

JR: Right.

KD: And then on the other hand, just paying attention to what's going on out there, I guess.

JR: Right. And trying to keep up with it, trying to amend the rules in order to make sure they could credibly apply in this very different kind of environment, and continuing to focus on fixed-income markets. So, again, this was trying to pull fixed income, as I said, into the twentieth century, create greater transparency, still dealing with markups and unresolved questions about markups and how do you define whether the amount of your markup is based on your contemporaneous cost, what does that mean and how do you define that in cases where things are not traded very often?

KD: That's the big problem, I guess.

JR: It certainly is a big part of the problem, yes. Yes, and continues to be an issue in many cases, I think.

KD: You're looking at all of this from a slightly different perspective from the NASD. How was your toolbox different from when you were working at the SEC?

JR: Well, much of the authority felt like it was somewhat derivative. I mean, I think at the time that I was there, the NASD had a lot of authority and an explicit mandate to get much tougher with market maker oversight, in particular. But the Commission and the Commission staff were certainly creating a lot of pressure to do something that the NASD could do on its own. And in some cases, there were things that I think the SEC thought that we could do more efficiently on their behalf. So I think there were certain regulatory functions that felt like the NASD was sort of operating as an instrument of Commission authority in cases of –

KD: What's an example of that?

JR: Well, certainly in the OATS area. I think these were rules that they might have drafted on their own, and had very specific ideas about how they ought to have been drafted, but it was more efficient for us to write them. I don't second-guess that decision and I currently certainly understand why they wanted to proceed that way. But part of our agenda and portfolio was affected by the set of things that the SEC thought it was important that we do.

KD: Right. I mean, NASD had always had a regulatory function anyway –

JR: Yes.

KD: – before it was broken out separately.

JR: It was, but probably, to be fair, without a lot of scrutiny or oversight by the SEC. And I think, yes, in the wake of the market maker scandal, that changed in a very significant way, and probably appropriately so.

KD: And earlier, it was mostly broker-dealer, just looking at regulating broker-dealers' jobs.

JR: Yes, and I think the NASD processes, before this change and the creation of NASD regulation, the mechanisms were much more controlled by the dealers themselves. Part of the change was requiring a majority independent board at the top of the organization, and then all of the major regulatory functions, whether it was market surveillance, oversight, the various district committees, the National Adjudicatory Conduct Committee, having the governance of those reflect public interest over the interest of the industry. And that was understandable. Of course, it caused pushback from many segments of the industry the other way, so one of the watchwords or phrases that I remember hearing at the time was, "Put the self back in self-regulation." There were a lot of firms that felt like suddenly this was an organization that no longer represented them in the way that they had been accustomed to.

KD: And there would have been a bit of a cultural change.

JR: Huge cultural change, yes. And I think Mary navigated all of that well, but it was definitely a balancing act to keep the involvement of the industry in a way that was helpful and constructive and actually got the benefit of an industry perspective on how to most effectively and efficiently oversee these things, while dealing with the obvious conflicts of interest.

KD: And this probably would have been the time of the SOES bandits.

JR: Yes. No, I think that's right. Yes.

KD: Did you deal much with that?

JR: Not so much directly, because there were – I think there was a lot of focus at the SEC at the time. And I think NASDAQ, obviously, which was now part of the NASD but segregated in a real way, was much more – was certainly focused on that activity in a significant way.

KD: Any other initiatives from that NASD period that we haven't talked about?

JR: I think that covers most of them that come to mind. I mean there were – I remember being involved in changes of rules around mutual fund advertising, sales incentives that are provided to people who are selling mutual funds. A woman named Clark Hooper, who is fabulous, was in charge of that area, so I worked a lot with her on those issues. Limitations on gifts that could be provided, business gifts to registered representatives, so that's some of the other –

KD: Is that a pay-to-play kind of thing?

JR: Well, sort of a pay-to-play. It's basically trying to place limits on the extent to which the decisions of registered people can be impacted by inducements, gifts by people who are not motivated by best-execution considerations, let's just say.

KD: And the record shows that you were still involved in a lot of municipal bond stuff.

JR: Yes, continued to be. Partly it's because there weren't that many people that were really heavily involved in it from a regulatory perspective. It was a pretty tightknit kind of community, so people that were keeping an eye on that from a regulatory perspective were relatively few.

KD: Which gets to your next career move, which was to the Bond Market Association.

JR: Yes.

KD: How did you get to that?

JR: Well, I knew Paul Saltzman quite well in various – he was a client when I was at Morgan Lewis. I was at Morgan Lewis for a relatively short period of time. He was a client there. So I had that interest and expertise, and it gave me a chance to be engaged in policy issues sort of outside the government, which was something that I hadn't really experienced before, so it seemed a timely way to put my experience to use.

KD: Characterize the organization for me a little bit when you got there.

JR: The Bond Market Association?

KD: Yes.

JR: So it was very different from the SIA at the time. Part of it is that the membership was much smaller and more cohesive, in a way. I think the interests of the members were much more aligned. It was an organization that I think was very effective in terms of its governance and the discipline of its message and its credibility as an organization within the space that it operated. And I think part of that is that the governance of the organization consisted of, often, people very senior in the very large, fixed income firms. So you had people who often were the head of fixed income within very large bulge bracket firms.

So part of what that meant was it was easier to get consensus, because on most topics you could get eight or ten people in a room and decide what the position was that you wanted to argue for. The equity side was always much more fractious and dispersed group of interests, and so a bigger number of cats to herd. So I think the BMA was effective at getting access to the regulators and having a constructive dialogue and impacting policy. And obviously, from the standpoint of the fixed income firms, their interest was preserving as much of their franchise as they could, and trying to push back on what they saw as overregulation and distinguishing fixed income from equities markets in terms of how the regulation should be applied.

KD: I know a lot of what you were doing was just, it seems like, explaining to the press and explaining to people what the difference is between the bond market and the equities markets.

JR: Right. So some of it is defensive. Some of it, I think, is trying to work hard for high standards, in terms of best practices, in order to forestall more regulation that people would have been concerned would overly restrict the range of things that people could productively do in fixed income. Late in my tenure there, one of the significant issues was fixed income research. So you have the big scandal in terms of equity research and people being paid in order to write good research reports.

I think there was a real concern that that was going to spill over into the fixed income area. So the research rules did not, by their terms, cover fixed income, but I think there was a real concern that that might happen. So there was a real interest in trying to make sure that there were strong standards of conduct that were being adopted on the fixed income side, and trying to tell the Commission, "You don't need to worry about this."

KD: What was your relationship with the MSRB?

JR: Well, so I have to say, the BMA was organized into various different divisions. So there was a municipal division that dealt with the MSRB all the time. I was more kind of a free agent dealing with an awful lot of different issues, so I did not deal with the MSRB. I mean I did, certainly on occasion, but I was not engaged with them on a daily basis. So it was very much particular product groups within the firms, their interests were mirrored by having a particular division of the organization that represented them. The other big memory that I have from my time at the BMA is September 11th and the time immediately after that, since we were located downtown, at the time, on Broad Street, and had been there for a long time.

So most of us were there, onsite, on September 11th, not far away from where all of this was happening. So other than the personal experience of just the shock of dealing with that, the thing that stands out is the BMA played a really critical role in serving as an organizing point for keeping the fixed income markets operating in the days after that. So making sure that there were efforts underway to make sure that trades were unwound or settled in the appropriate way, to figure out who had what kinds of positions. And I have to say, it was inspiring in many ways, because there were particularly a huge number of back-office professionals and people who didn't get much recognition in most circumstances, who practically slept on their desks for days or weeks after that. So the BMA played a really important role in providing a forum for people to be able to keep the markets running.

KD: Because the market structures had broken down at this time?

JR: Well, it was just that there was never – I mean, the fixed income markets, by their nature, are decentralized. So you never had a particular exchange or two exchanges that served as the natural focus for doing that. So you had to have some other way of – I mean, the BMA, for example, always made closing recommendations for particular holidays, those would be published by the BMA, because you didn't have an exchange to do it. So it was inspiring, because you had a lot of people, many of whom clearly were still dealing with a lot of grief and under very difficult circumstances, almost believing that this was something that, as a kind of patriotic duty, they needed to do. So it was a difficult time, but I look back on that time with appreciation for the effort that people put forth.

KD: One of the things that's going on at this point is that the – I think the regulator is always pushing for greater visibility, greater transparency.

JR: Yes.

KD: And that's an issue for the bond markets.

JR: Yes, absolutely. And huge resistance on the part of the bond dealers from agreeing to more transparency. It's not something that they welcomed with open arms, certainly. But I think ultimately there was pressure from the Commission to do it. The NASD was the – and I think Arthur Levitt was a big part of that – the NASD was the easy vehicle to be able to start that initiative. And I think the bond dealers had some legitimate concerns, certainly. I think they were concerned about – and not just the bond dealers, but institutional clients of theirs, too, large asset managers, institutional investors, concerns about information about trades of theirs leaking into the market too quickly. So a key question was always, how do you provide appropriate transparency? How much of a delay do you need to have in order to make sure that people won't pick up on – you know, real-time transparency of the type that you had in the equity markets. I think the feeling was it would allow people to find out about positions of institutional investors in a way that could be used against them or undercut them. And part of it is just the difference in fixed income markets. If you are an institution sitting on a big chunk of the total amount of available liquidity of a particular bond, and somebody knows that you're a big buyer or seller of it, that could have a significant impact on the price.

KD: Yes. So this is one of the classic institutional things where you're trying to do transactions without people knowing about it so it will affect the price.

JR: Yes. So it's a balance. You can't achieve both objectives perfectly. Anything you do to create more transparency runs the risk that other participants in the market can use that information to benefit themselves. But there's a public interest in having more information about that out there, so that people can actually – so that there is a reality check on the prices that are being quoted by dealers or others. So trying to figure out how to strike that balance is the hard part. But overall, I think the experience of traders, early on and since then, has been that actually creating a greater level of transparency overall improves the integrity of the market and improves the functioning of the market. And I think some of the more exaggerated fears about what might happen from more transparency turned out not to have been justified.

KD: Yes, which is often the case.

JR: Which is usually the case, yes.

KD: So there's an interlude here after the Bond Market Association, right? You went to Citi?

JR: Oh, I did, yes. I went to Citi. I followed Rick Ketchum there. So he had become the general counsel of the investment bank there, and I had a long association with Rick and he asked me to come over. Rick ended up leaving about six months after that, so most of my time at Citi, sadly, was spent after he had gone.

KD: Did he go to the Stock Exchange?

JR: Right. To, yes, New York Stock Exchange Regulation. Yes. And almost on my first day at the job at Citi was when the mutual fund timing scandal had – so, yes, it was almost my first day, pictures of Eliot Spitzer up there on the TV criticizing all of the firms, including Citigroup, for practices around that. That was an interesting introduction. So I had a variety of both legal and compliance responsibilities at various times during the time that I was at Citigroup, and it was an interesting time to be there, certainly towards the latter part of the time, as the financial markets were coming under greater stress and ultimately melting down.

The main message that I have, or the lesson that I took away, is that the financial supermarket concept really doesn't work, and I think Citigroup certainly has changed its composition significantly since then. I think there may be some useful synergies from having commercial banking and investment banking under the same roof, but this idea that you can efficiently offer every kind of financial product under the same kind of holding company, understand what's going on in all the different geographies and all the different product sets and keep it all together, I just think doesn't work. Just as a management matter, as a governance matter, it just feels like it's not possible to do all of that.

KD: Is it a matter of the financial structure needing to be different for different areas?

JR: I think it's a combination of a lot of things. I think the culture is different in a lot of cases. I think investment banking is very – the culture of investment banking is different from commercial banking. I think they typically don't speak the same language. You can try to force as much cooperation and synergy as you want, but you have a human element that you can't really appeal with. And, yes, then certainly the retail business is fundamentally different from the institutional business, and different types of retail business are different among themselves. So they're all things that I think can be done effectively on their own, but just from a senior management perspective, to understand all of those different pieces from a business strategy, risk management, legal incompliance, and every other kind of standpoint I just think can present an almost insurmountable challenge.

KD: So what brought you back to the SEC? It's a bit unusual for folks to come back.

JR: It's a little bit. So part of it was I was – part of it is the experience of the financial crisis. It's not that I'd ever lost an interest in public service or in regulatory policy. I continue to be involved in that. So Mary Schapiro was back at the SEC as chairman. Elisse Walter was there. Robert Cook had joined as head of Trading and Markets. He was somebody that I counted as a colleague, who I'd worked with when I was at Citi. He was outside counsel. So a lot of friends and friendly faces, and Dodd-Frank had just been passed. And it seemed like this is the time to do it, if you're going to do it, and so I did. Moved back to D.C., with my partner, who was not eager to move to Washington. He sort of saw it as the end of the known universe, but he grew fond of it over time.

KD: What was the position that you went into?

JR: Deputy director in trading and markets, under Robert Cook. So with responsibility for clearance and settlement areas, net capital, and broadly speaking, implementing a lot of the derivatives rules that had been given to the Commission under Dodd-Frank. It was an enormous portfolio of things. So that was a little intimidating. If I had really understood the scope of that, would I have been as eager to go back? Probably so, but it was an awfully full plate. In the derivatives area, you had legislative mandates on changes to capital, to margin, to segregation; changes to the clearing system; regulation of rating agencies, execution systems, securities, SEFs.

KD: SEFs?

JR: I'm trying to remember what the acronym stands for. Swap Execution Facilities, I think. But basically, it's rules to promote the electronic trading of derivatives of swaps in a way that is more transparent, allows for better market discipline to exist.

KD: So you've got all these issues.

JR: So you got all these things.

KD: Did you set up teams?

JR: Well, yes. There were already groups that were sort of naturally formed. In some cases, it would be sort of cross-pollination of different groups within the division to lead that.

But yes, it was a big management challenge. And plus, you still had to read all of the documents and understand what you were trying to achieve. And then you had all of these events that intervened, too, during the period. So 2011, in August, you have the downgrade of the U.S. debt, which created this huge amount of anxiety and dislocation in trading and trying to respond to that.

KD: What was your response?

JR: Well, to try to reassure people within the agency, and then elsewhere, that the large firms were appropriately hedged and were – I mean, this wasn't so long after the collapse of Lehman, that people had a high level of confidence that another major financial institution might not be impacted in the right away. So it was both that and then European – many of the European countries were in shaky financial shape, and so there was concern about whether there were firms that were overly loaded up on debt of those.

So a lot of it was reporting within the agency so that people within the agency had – we had adequate assurance that the firms were managing the risks in the right way, and that people at the commissioner level could have that assurance. And to the extent that they needed to, that they could communicate that to outsiders and provide appropriate assurance to them. But that was an ongoing effort over practically all the time that I was there – anytime there was any kind of significant dislocation then the question is, do you have adequate assurance that the firms are managing this risk appropriately themselves? So that was a big part.

And then October of the same year, you had MF Global which blew up. That was a different kind of issue, because it wasn't so much a market-wide issue but you had a large number of customer accounts that were affected, both on the futures and the security side. So that was an interesting one to see upfront, because a big part of that was trying to manage the – first of all, the effort was to manage the acquisition of MF Global by somebody else who could take over everything before they went under. And that effort continued up until the night that transaction was supposed to be signed. Regulators and all of the deal participants were on the phone, and there were inklings, indications that something was perhaps not right with the customer segregation account, and so there were efforts to run that to ground. And those stretched on further and further into the night so that by midnight or even after midnight, we finally got the word that they had discovered or had verified that there appeared to be a $900 million hole in the customer segregation account.

Well, of course, the deal partner, the acquisition partner, at this point had long since left the room, so that wasn't going to happen. And some of the folks from MF Global made some suggestions that they could deal with this and they could plug the gap if we could sort of get the New York Fed on the line and arrange for Fedwire to be opened up and provide an advance of money to close the gap, and none of that seemed very credible. So it was within a relatively quick period of time we realized that we were going to be dealing with one of the larger SIPC failures, bankruptcies, that had existed in a while.

So I remember being on a call at roughly two o'clock in the morning with Mary Schapiro and Gary Gensler and other folks from the CFTC and SEC, trying to sort of plan next steps. I mean, part of it is informing SIPC, making sure that you were taking the steps you needed in order to deal with the issues. And then the other part of that is, what do you tell the rest of the world about how you're managing it? That was an interesting experience.

KD: So what happened in the end?

JR: So in the end, we had to work together with the CFTC staff in order to try to make sure that customers were covered as best they could be. I mean, that was really the main focus, to make sure – what is the exposure of counterparties and customers, and how do we use the existing safeguards to make sure that they are in the best position possible? And then also reassure the markets that there wouldn't be any broader ramifications. And just given the nature of MF Global's portfolio, this was not something that ought to have any broader kind of impact, and it didn't, but you wanted to provide some assurance to people that it wouldn't have that impact. So that was one.

And then you had Knight Financial, Knight Capital Group, which, because of the malfunctioning of – that was a year later – in 2012, I think. A similar kind of thing, although in that case we were able to move the positions from Knight that needed to be moved to an acquirer. Goldman Sachs, I believe, took them over. But that was sort of an effort of – it's a case of the regulator kind of acting as midwife to try to facilitate a resolution that didn't require a bankruptcy filing or a SIPC situation. So there were a number of tense days of working with the various parties and with the DTCC, to try to make sure that all of that was resolved in a way that had the least impact possible on the market.

You can talk all you want theoretically about how the regulators – you write the regulations and they have the impact they have, and if a firm goes down then you work it out. But you're going to have to deal with it one way or another, beforehand or after, and if there's a way that you can help to manage the situation so that it has less of an impact, you certainly feel obligated to do that. So part of that I think was making it clear to the folks at Knight that there aren't that many suitors or opportunities for you to resolve this, you need to strike the best deal possible and need to do it quickly or the consequences will be worse.

KD: You're doing a lot of rulemaking. We started by talking about the rulemaking.

JR: Yes.

KD: I guess while all this is happening, you're in the middle of moving these rules along.

JR: Doing the best in order to do that, right.

KD: And at the same time, the capital markets are changing really quickly. You were out of the SEC when all the big market-changing moves went through.

JR: Yes.

KD: How much, in that rulemaking process, did you take into account this reshaping of the markets? It's sort of like you're chasing a moving target, in a way, because your dark pools are increasing. You're having more and more –

JR: Oh, sure. Well in terms of the equities markets, I think there was definitely a pause. So there was a concept release that was put out in 2010, even before I went back to the Commission, after Reg NMS had come out, kind of taking stock of where developments were moving in the equities markets. I think a lot of that focus really was on pause after Dodd-Frank, because there just was not the bandwidth to really think about those things in a concentrated way. And I didn't have responsibility for the equity market issues at the time that I first came back to the Commission, so I wasn't focused on it really much at all.

I was solely focused on implementing Dodd-Frank, on the derivatives rules, on dealing with the crisis of the day, whatever it might be, getting much more involved in international efforts to coordinate on derivatives rules, so working with international regulators to try to come up with common standards, and then Volcker. There was Reg SCI and Volcker.

KD: Talk about Volcker. Talk about how you approached that. And, again, we're talking about bank regulators being involved.

JR: Yes, that's right. Unfortunately – we had a good relationship with the bank regulators, but, again, started out at different places. And I think the effort to come to terms, come to a common agreement on the Volcker Rule was challenged by the fact that the bank regulators were inclined to view this from a bank regulator prism, which is to say you wanted hard, clear standards that could be easily enforced from a supervisory standpoint. From the side of the securities regulators, we were very concerned about the impact of the functioning of the market, particularly the corporate bond market, and a lot of this was affected by how you defined the exemption for market making.

So Volcker said a banking institution can't make proprietary bets that are backstopped with public funds, which is a principle that is very hard to argue with, right? But everybody recognized that market-making activity provided a public benefit that you needed to preserve. So how you separate out what is real market making from what is proprietary trading is a difficult thing, when in practice, the two often can sort of merge together. So our challenge was to convince the bank regulators that there was a way to do this through a policies-and-procedures kind of approach that would give people enough confidence that Volcker had real teeth, but at the same time would allow firms to continue to make markets.

That was a long process of the various regulators getting to know each other and working through these issues, and it wasn't easy. And then by the summer of 2013, if you had tried to ask me for odds on whether Volcker would actually get done by the end of the year, I would not have given good odds. We were still a pretty far way apart. So it was really, I think, the renewed effort to do that, certainly pressure from Treasury to try to get this completed by the end of the year, and I think Jack Lew and Mary [Miller} – but folks at Treasury really provided a lot of push and organization around the efforts that had been lacking to that point. And you had a lot of divisions within the Commission, because there were commissioners who, frankly, didn't want to implement any version of Volcker, because they thought it was a bad idea from the beginning.

So we had to work with what we had and with the mandate that we had to try to come up with the best product we could that would get three votes. And I feel like, against all odds, we did it. Now, at the end of the day, some people may not be all that happy with the result, but I feel good about the effort and I feel good about what we did and the way that we worked together to finally get over the finish line.

KD: And Reg SCI?

JR: Yes. So Reg SCI was, in part, an outgrowth of the NASDAQ SIP shutdown, which was another one of those crisis events that occurred in 2013, in August. All these things seemed to happen in August, when people are trying to be on vacation, for whatever reason. So that was inconvenient. It was an outgrowth of that and other smaller problems that had happened with other exchanges over time, and the sense that there needed to be stronger controls around the systems of all of the major pieces of infrastructure – the SIPs, the clearing agencies.

KD: What's an SIP?

JR: Oh, sorry. Securities information processor. So the New York Stock Exchange traded stocks trade on one tape that is governed by one of the SIP entities, and NASDAQ is another one. And then you've got OPRA, which is a separate SIP for the options market. But basically, it runs the machinery for disseminating best bids and offers and last sales out into the marketplace. And if it's not working, then trading really can't continue, because people don't – there's not a common database of trading information that people can rely on.

KD: So you wanted to come up with a regulation to sort of say, "Here's the minimum standards," I guess.

JR: Yes. And so the challenge there was to be able to create some enforceable thing – it's somewhat similar to Volcker in a way – but to create enforceable standards that wouldn't be overly prescriptive or strangle the ability of exchanges or other entities to run their business in a reasonable way. So I think there was concern at the Commission level that we not write this in a way that amounted to a form of "gotcha," that anytime there was a significant system failure, ipso facto, it meant that there was some kind of violation.

So I think there had to be a recognition that whatever regime you created could never create a guarantee that problems wouldn't exist, because it's the nature of complicated technology systems that no set of controls are going to be perfect. But defining what are the right set of assumptions and the right parameters for controls that people could have a reasonable level of assurance that people were doing what they could.

KD: Was this the kind of thing where you had to bring in consultants to deal with the technology?

JR: Well, we did. I think by that time, Mary and then later Elisse had bulked up our technology expertise in-house, which was helpful for this purpose. But definitely, you had to understand at some basic level – even we, who were kind of writing the rules, managing the process – had to understand at some level what were the standards in the industry that people relied upon for technology controls, because we weren't inventing this out of whole cloth. I mean, there was a lot of effort that had been done, really in conjunction with the government and other agencies, in the private sector, for establishing basic standards that people could look to.

When the rule was first proposed, there was a concern that the Commission should not set in stone a list of particular publications that people should be held to – you didn't want to set in concrete at any particular point in time what the right standards were, because, obviously, they can change and evolve over time. But you want to give people guidance as to where they should be looking and what the lift should be in order to show that you are meeting the appropriate standards.

KD: There's an Office of Analytics and Research that shows up here in my research. Is this the beefing up the technological capabilities that you were talking about?

JR: Oh, yes absolutely. So during the time that I was there – Robert Cook had started this and I tried to continue to reinforce it – within Trading and Markets, we had a group of – I think the name may be different now – headed up by Gregg Berman, who we hired from the private sector. And this was happening elsewhere within the Commission. In the Enforcement Department, you were getting a lot more quantitative expertise in terms of sifting through data. It was happening with Norm Champ in Investment Management, and certainly in OCIE. But we wanted to have an office that included quantitative expertise that could actually look at market data in a way that we had never been able to before.

So that was what was behind the creation of what's called the MIDAS system, which still exists, and I think is used as a resource by a lot of people both in the government and in industry today. So I think there is a continuing effort on the part of the agency to become a lot smarter and more adept at manipulating data in a way that can help to drive regulatory policy decisions.

KD: Anything else we should touch on in your SEC career?

JR: Not that I can think of. It's an awful lot.

KD: So did you stick it out and see all the rules to completion, or did you –

JR: Not even close. There are some that are still waiting. You've got to remember, in a heavy year within Trading and Markets, you might have one or two significant rulemakings that were trying to be pushed along every year, and we were trying to deal with a dozen or more. So there certainly were some important things that got done, and a significant part of the mandate was carried out, but there was no way we were going to do it all. And no way that the legislative mandates were ever really credible in terms of when things were supposed to be completed by.

KD: So what was the attraction of IEX? What brought you to that area?

JR: I became acting director of the division when Robert left in December of 2012, and so I gained responsibility for the equity market oversight at that point, because I was working in that role. So I had to try get a lot smarter about electronic trading, trends in high-frequency trading. I think a lot of people were talking about not only market dynamics, but fairness issues that had arisen because of the increasing influence of high-frequency traders. So I felt like I had to know more about it, and I got to be interested in it.

And there were a lot of people from buy-side firms, from institutional investors, that made the rounds at the SEC and that I talked to who expressed a lot of their concerns about how the markets had migrated in a way that they thought did not serve their interests very well. So I heard that from a lot of the large buy-side firms directly, and it did help to inform my thinking about some of the market structure questions that were still out there, that, as I said, the Commission had not really had the bandwidth to really think to take a lot more action on.

KD: There was the report after the flash crash.

JR: There was. So, certainly, that was there, and that led to the Limit Up/Limit Down regime and the Market Access rule and those sorts of things. So there certainly were regulatory responses to the questions about systemic risk and the impact of various kinds of trading activity on the markets, on volatility and the riskiness of the markets. The fairness issues really were not grappled with, in some sense because maybe it was just harder to grapple with them in any kind of convincing way. But I certainly was interested in all of those issues, too. *Flash Boys* came out just about the time that I was leaving the Commission, because I had always planned to come back to New York. Nick was ready to come back, so the timing was right.

So I wound up at IEX because these guys basically reached out to me. I wasn't bright enough to come up with the idea on my own, so they had to think about it. So it felt like a really interesting way of working within the private sector to advance some public policy goals that I really had never had an opportunity to do before. And I don't want to oversell the public policy aspect. I mean, we are designed to make money and hope to do all of that. But certainly, the task of creating an exchange that is functioning in a different way from any other market that is actually out there, and in ways that are designed to be more investor friendly, was a unique kind of opportunity.

KD: And I think the press release said something like you came in to help turn this dark pool into a market, into an exchange.

JR: Yes. Right. And clearly, the vision had always been to operate as an exchange. It's just hard to go from zero to eighty right away, and so we started out as an alternative trading system. Turned out to be a much longer and rockier road to getting approval as an exchange than, I think, folks here had anticipated, than I anticipated.

KD: Why?

JR: Why was it longer and rockier?

KD: Yes.

JR: Because there were a lot of people that were a lot more threatened than I think we even understood were threatened. Part of art of it is it took longer because it just took longer to ramp up to be in a position to operate an exchange with everything that comes along with that. So it just took time because it took the time. But I think at the time that we filed, finally, to become an exchange, I think most people in the company – I, for example, I thought it was likely that we would get maybe two, three comment letters. You know, exchange applications were not things that had drawn a whole lot of notice or controversy or interest, frankly. I think of the three or four exchange registrations, before we filed, drew virtually no comment letters. Part of it is that they were all kind of like copycat versions of exchanges that were already out there.

So yes, we wound up with, at the end of the day, hundreds and hundreds of comment letters and a lot of very fierce and vocal opposition, as well as a tremendous amount of support from various kinds of communities. Certainly, the weight of the letters was all in support of us, but you had very focused opposition from some large, influential firms, and that was at the Commission level, it was on the Hill. It was, to a certain extent, in the press. And so, in order to fight back, in order to survive, we had to fight on the Hill and at the Commission and in the press.

KD: What was the grievance? What was the concern?

JR: It depends on who you talk to. The main issue that drove most of the comments was over the speed bump. We have what people started to call a speed bump, which is basically just every order that comes in, every message that comes in from whoever sends it, goes through a 350-microsecond so-called speed bump before it can actually be processed by our system. And the purpose for that is to just a very tiny fraction of time to slow down processing in order to blunt the advantage that the fastest speed traders have versus long-term investors and institutional investors.

So we had done this as an alternative trading system. Everybody knew about it. It was not particularly controversial while we were doing it as an ATS, so far as we can tell. When we tried to do it as an exchange, suddenly it became very controversial and people objected on all kinds of grounds, including that it didn't comply with the regulations, that it would create havoc in the marketplace, that nobody would know what accurate prices were anymore because they'd be waiting for IEX to update their prices while everything else was more current. There was a lot of misinformation that was being deliberately spread. My own view is that those objections were really a cover for the fact that we were operating an exchange in a very different way, on a whole host of fronts that people were threatened by.

So I just think that they didn't want us to operate as an exchange that did not sell market data, that was not conflicted in terms of its ownership, that was in a position to speak out on a whole range of issues as an exchange in opposition to the way that existing exchanges were functioning. So I understand, in retrospect, why there was so much opposition. But it sort of felt like being in the trenches for months and months, just sort of fighting for the right to compete, with no assurance what the outcome was really going to be at the end of that process.

KD: So sheer persistence just made the difference?

JR: Well, sheer persistence and the fact that we did have a lot of public support from the buy-side, from a number of sell-side firms as well. So, I mean, there were firms like Virtu, which a lot of people think of as a high-frequency trading firm, that wrote a public letter saying, "I think they ought to have the right to do this, to provide a competitive innovation. We don't see anything wrong with it." And a variety of other sell-side firms, but certainly a lot of significant asset manager firms, public interest firms, a lot of retail investors, a lot of pension funds, so Texas Teachers' Retirement System, for example, and a number of others. People who had almost never written in a public way on this kind of regulatory issue did so for the first time.

So we had enormous support in addition to opposition that we had to overcome. But at the end of the day, I think we won because we were right on the merits, because there was nothing about the regulations that said that we couldn't do this. And because I think the Commission's tradition over time had been to encourage competitive innovation, certainly when you're talking about trading venues, more often than not. So we felt like we were on the right side of history, we were on the right side of the regulatory precedent, and I think we were fairly skillful at providing the message publicly and to the agency.

KD: So now you get to see how it works out.

JR: I don't think it was a foregone conclusion, but I obviously think it was the right conclusion. Yes, and so now we actually have to function as an exchange, and who knows? But there's a hell of a lot of crap involved to being an exchange. But that's all part of it, too. So as an exchange, you're now a participant in the – we talked about the SIPs, the operating committees that govern the SIPs, the consolidated audit trail, the Limit Up/Limit Down plan, part of that ecosystem. So that's a large part of my focus currently. And we have a very different view on a lot of those questions than other exchanges do.

So part of the challenge is trying to sort of figure out how do we advance that message, recognizing that we're just one vote out of many? But we continue to increase our business, our market share. We're planning to start corporate listings later this year. This company, at this point, has gone so much further than anybody gave them any reasonable chance of doing two or three years ago. So I'd like to feel that I've been some small part of that, but I do feel very good about where we've gone and where we're going.

KD: Terrific.

JR: Yes.

KD: Anything else we should talk about before we wrap up?

JR: I'm probably talked out. You're probably tired of listening to me, but no, I think those are the key things.

KD: All right. Well, it's been great talking. Thank you.

JR: Thank you. Absolutely, you too. I really appreciate the time and effort.

[End of interview]