SECURITIES AND EXCHANGE COMMISSION HISTORICAL SOCIETY

The Roundtable On The Integration Of The 1933 and 1934 Acts

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P R O C E E D I N G S

(2:00 p.m.)

MR. LEVENSON: My name is Alan Levenson, and I'm Chairman of the Oral Histories group of the SEC Historical Society, and it's my privilege to open our session.

First, I want to welcome Commissioners Hunt and Glassman, and I know that Chairman Pitt would have liked to have been here, and sends his regrets. So we appreciate the Commission making available this hearing room for our second roundtable.

This roundtable relates to integration of the '33 and '34 Acts, which has been a process over the years, starting back in the 1950s, with the S8 form dealing with options.

Before I introduce the chairman of the Society, David Ruder, former SEC Chairman, former Dean of Northwestern University Law School, and Chairman of many other activities, and current Professor at Northwestern.

I'd like to say thank you to those who have been responsible for preparing and planning this second roundtable. Dick Phillips, who is the co-moderator, Dick Rowe, the other co-moderator, former Commissioner, Irv

Pollack, former Director, Stanley Sparkin, as well as the other members of the Oral Histories Committee, namely Carla Rosati, our Executive Director of the society, Dan Hawke, Andrew Glickman, John Walsh, Dave Silver, who has been of great service to this and the first roundtable.

If I have missed somebody, I apologize, but most importantly of the group was one I haven't gotten to yet, and that's Jack Katz. Jack has been diligent, Jack has been resourceful, Jack has been a resource. And we all thank Jack for his participation.

Having said thank you, the final than you goes to the panelists who have made the time to participate, including Ed Greene, who has come over from London for this purpose.

Without further words, I'm going to introduce the Chairman of the Society, and a personal friend, David Ruder. David.

(Applause.)

MR. RUDER: Thank you, Alan. It's always a pleasure to hear you introduce me, you're so gracious. It's a pleasure for me to be here, too, with all of my friends. I can't tell you how much the Historical Society

appreciates the fact that the Securities and Exchange Commission is cooperating so wonderfully with us in our endeavors to preserve the history of the Securities and Exchange Commission, and the Securities markets.

Paul Gonson, who is our current President, is here, and I can tell you that his presence in this enterprise has been absolutely crucial. He may have thought it up all by himself, although I'm not sure when he was -- when he was in the General Counsel's office, but certainly his service in organizing and, now, administering the organization is wonderful.

During the last year or two we have begun our activities. We held the special issues conference last fall. We are having our second roundtable, oral histories here today. We have conducted a number of oral history individual interviews, and we are actively pursuing future activities, including I think the most important will be the -- not the creation of, but the improvement of a web site which will allow the documents and recollections that we have gathered together to be available instantly to those who want to see them.

And I have been very happy with the progress that

we have made. I want to pay a particular thanks to Carla Rosati, who has just completed her first year as our Executive Director, and has been very instrumental in our progress.

I can't help but give you my recollection, since I'm not going to be on the panel, Alan. But I remember in 1966, a conference at Northwestern University School of Law organized by Ray Garrett, who then became chairman. And at that time the leading practitioners and academics came to Northwestern to discuss improvements in the '33 and '34 Acts, and we concentrated on problems related to what is now called integration, and problems related to civil liability.

Subsequently, the American Law Institute sponsored its Federal Securities Code Project, and we spent, some of us, about ten years trying to reconcile all six of the Federal Securities Laws into one single law.

And it was fascinating for me to witness the progress on the integration effort, but because by the time we ended our ten years the Commission had already accomplished what we were planning to accomplish by legislation. A great testimony to the ingenuity and

brilliance of the SEC and its staff members.

So I'm pleased to be here with so many old friends, and to see you and hear you in your recollective mood.

MR. RUDER: I will now say here is Dick Phillips and his group. Thank you.

MR. ROWE: Well, welcome, everybody. I see we have a pretty good audience. Before I introduce the other panelists, I'd like us to pause and remember the two former Commissioners who contributed mightily to the subject matter that we're going to be discussing today, and that's Frank Wheat and Al Sommer.

You'll hear from my fellow panelists some of the contributions they made to the topic that we're going to discuss.

(Pause.)

MR. ROWE: Let me now introduce the panel. On the far right, Linda Quinn, who is Director, of the Division of Corporation Finance from 1986, to 1996. Longer than any of the other former directors seated around this table.

She is now with Shearman & Sterling in New York,

and while she was at the Commission she received many distinguished awards.

Next to Linda is Ed Greene, who was my successor as Director of the Division of Corporation Finance, and served from 1979, to 1981. Ed is with Cleary, Gottlieb in London, and he is a trustee of the Society, the Historical Society.

Next to Ed, to his left, is David Martin, Director from 2000 to 20002; but he began his service at the Commission, as I think John Huber may tell you later, in the early 1980s. He previously was in private practice at Hogan & Hartson, here, in Washington, D.C.

Next to Mr. Martin is his immediate successor, Alan Beller, who also comes from Cleary Gottlieb, but he's in New York, or was in New York. And he is the present Director, as I guess everybody in this room probably knows.

At my immediate right is Richard Phillips, who served on the staff here at the Commission from 1960, to 1968. You may wonder why a non-Director the Division of Corporation Finance is on this panel.

For among other reasons Richard was the staff

director of Frank Wheat's disclosure study.

To my left, is Alan Levenson, who needs no introduction, but was Director of the Division of Corporation Finance from 1970, to 1976, and he's a trustee of the SEC Historical Society, and he chairs the committee and is responsible for this roundtable.

To Alan's left is John Huber; he was Director from 1983 to 1985. He worked both in the Division and in the General Counsel's Office while he was at the SEC, and he's here with Latham & Watkins, in Washington. And I forgot that Alan is at Fulbright & Jaworski, in Washington.

And, finally, at the far left, Brian Lane, who served as Director from 1996, to 1999. He is currently a partner at Gibson, Dunn & Crutcher, in Washington, D.C., and he also served in a number of positions at the Commission and received a number of awards while he was on the staff here.

Richard.

MR. PHILLIPS: Let me kick off the discussion here by taking us back to the early 1960s when integration of 1933 Act and 1934 Act disclosure first became a topic of serious conversation.

The proposal for integrating the two disclosure regimes was a very visionary and bold proposal, largely because of the enormous disparities that existed between '33 Act disclosure requirements and '34 Act requirements.

These disparities existed with respect to coverage, with respect to contents, with respect to timeliness, with respect to dissemination, level of SEC review, restraints on communication, trading restrictions, and civil liabilities. They were enormous.

It was not until 1964, that the full panoply of '34 Act disclosure requirements, reporting, proxy, and Section 16(a) insider trading reports became applicable to over the counter companies that were publicly traded in a general way.

Prior to 1964, these requirements applied only to exchange listed companies. Over the counter companies that went public through a '33 Act registration statement were subject to the periodic reporting requirements, but not the proxy rules, not the insider trading reporting.

The Commission was restrained, inhibited, if you will, from imposing extensive periodic reporting requirements, and other requirements on exchange listed

companies because it did not want to discourage exchange listing. And, therefore, the reporting requirements were minimal -- a Form 10-K that required certified financials, and not much more. As one well known Commissioner remarked, you could look at a 10-K during this period, and not even know what business the company was in.

There was also enormous, enormous disparities in other respects. Dissemination: '33 Act prospectuses were required to be disseminated by physical delivery during the offering period, and from 90 to 40 days thereafter, except for unsolicited brokerage transactions.

In every way, '33 Act disclosure was the focus of regulation. '34 disclosure was an after thought.

At the Commission, when I served as a legal assistant, way back then, in 1962-1963, every registration statement that was the subject of an order of acceleration, and that was virtually every registration statement that was filed was reviewed not only by the staff, but by the members of the Commission itself.

And because the Commission at that time had two former directors of Corp Fin, as well as a very experienced '33 Act practicing lawyer, that review was taken very, very

seriously.

On the other hand, '34 Act reports were never looked at by the Commission unless there was a serious enforcement, or other problem.

Over the years, as we go through the history of the march towards integration, we will see that integration, to the extent it has been achieved, has taken place in the light of narrowing disparities between '33 Act, and '34 Act regulation. The contents of disclosure is now virtually identical whether one is filing a 10-K, or a '33 Act registration statement.

The level of SEC review, unfortunately, also is now virtually identical because there is very little staff review of either '33 or '34 Act disclosures, except when there are problems, or in the case of IPOs.

Thus, sometimes the disparities have been resolved favorably towards regulatory scrutiny and strictness, sometimes they have been resolved in a way where regulation has been relaxed. But those disparities are now relatively small compared to the situation in 1960.

And one of the things we should bear in mind is

the extent of integration that has taken place in the last 40 years in the context of these disparities, and what must be done to deal with the disparities today as we move towards further integration.

Let's now start with Brian Lane. Go ahead.

MR. ROWE: We have, Richard and I, broke this panel down into decades, starting with the '50s and working up through our current decade. We also broke it down between Division Directors and I think we'll proceed in the latter form, not chronologically for various reasons.

And so we're going to start with Brian, and sort of show you close to the future, and then we're going to go back into the past.

Count Ciano, many years ago in his diary, said, "Victory finds a thousand fathers, but defeat is an orphan."

Brian, are you going to disclaim paternity of the Aircraft Carrier?

MR. LANE: Well, maybe, maybe not. I used to joke that it was last seen floundering somewhere in the South China Sea, but I now think there is efforts to resurrect portions of it. So, who knows.

Thank you. Dick is being extra kind because the real reason that I'm going first, rather than this kind of forward and backward look, is that I have to be at the airport, and I'll be leaving in about an hour. And so they were kind enough to accommodate me, and I give you my apologies in advance for having to depart.

I also have the disadvantage of going first in that I don't get to hear what the rest of the folks say for kind of fashioning things.

So what I thought I would do in the time allotted to me was really talk about -- since the subject is integration, and mercifully it's not other things that have happened in each of our tenures. I thought there was really sort of five things that happened while I was Director, which I'll touch on briefly, and how it affected integration.

Two of which started in Linda's tenure, and I inherited and saw through, which I will just mention. Interestingly enough I guess the first thing that was done while I was there was the so-called Task Force on Disclosure Simplification.

And this was really a project designed to get rid

of extra rules. You know, sort of the extraneous rules that have been sitting around in the CFR for way too long.

But there was a section in there that was sort of a plain English term sheet of some changes that could be done in the '33 Act and the '34 Act that sort of a simple list, one might say, that might fix a lot of the problems that were in there.

And some people would say that that was far more popular than what ultimately became the Aircraft Carrier if the Commission had been so moved to do that.

What you have to realize in 1996 was a year of promise for reform of the Securities Act. You not only had this task force project was done largely -- well, exclusively, with one exception, by the staff of the Commission.

But it was also an Advisory Committee, which was the other event that occurred, started during Linda's tenure, and Ed actually was a member of the Advisory Committee that was looking at the idea of company registration.

And Linda and Ed may want to talk about this to

some extent in their remarks, and I'm not going to go through, you know, what all went in company registration.

But it was a novel idea of integrating the '33 and the '34 Act we have to say. You register companies rather than registered transactions because the '33 Act, as we all know, is all about registering transactions as opposed to registering companies.

And if you did go to a company registration model you take care of a lot of some of the kinks that exist between the '33 and '34 Act. I think some would argue that maybe they raise other kinks as well, and the perfect solution, if it existed, would have been adopted, you know, sometime ago I suspect.

So that whatever road you go down in reform you're always going to have some sort of challenge.

But you had both of these efforts that completed in '96, and reports were issued.

And then you had Congress, which is a third item, adopted NSMIA, the National Securities Market Improvement Act of '96, which for the first time gave the Commission exemptive authority under the Securities Act. Which was much needed for the Commission to really do anything, and I

was the benefactor of being the first Director to sort of have that at my disposal.

MR. PHILLIPS: Interestingly, one would have thought the Commission would have eagerly sought that authority. In fact, up to that time, prior Commissions had resisted the authority on the ground that, if they had that authority, they'll get all kind of pressures to use it.

MR. LANE: And in fact one thing that is missing from NSMIA, is there is no order authority under the '33 Act, exemptive order authority. And that was purposely done for that very reason.

If somebody made an offer, gee, unsophisticated people were in it, can I come, and now plague Alan and the staff about, you know, really no harm, no foul, can we have an exempt order, and you would need about a hundred lawyers just sitting there handing out exemptions which the Division of Investment Management does have an exemptive order unit, though it's not really for the same purpose, but that's what they do. They sit there and look at the facts and decide whether they're going to give exemptive orders.

There are exemptive orders under the '34 Act

though, under that legislation.

Now, I must confess two things. One is that there was an attempt to try and get some exemptive authority in the Private Securities Litigation Reform Act of '95. And there was one provision that we had high hopes for, but, you know, a lot of people didn't think quite got us there. Including some people that are still here at the Commission. But the '96 Act made it clear.

The other thing that I should confess is that everybody seated at this table had some very clever predecessors in my position. And even though we didn't have exemptive authority, all my predecessors here used their definitional authority under the Securities Act extremely well, hence the 130 Rule.

This is not an offer, you know, this is not an exemption from the '33 Act, but it's just defined as not an offer.

And my hat is off to all of predecessors because they were very clever in coming up with, you know, Rules 134, 135, the safe harbors for research reports, and 137, 138, and 139, et cetera.

And we always did have that definitional

authority at our disposal, but, you know, exemptive authority was just cleaner. And it does provide, I think, a lot of flexibility to those of us who came after the '96 Act to really do whatever it takes, and the Commissioners working together to make recommendations for reform.

So that was sort of the third piece. And, again, all three of these occurred in 1996. So it was kind of interesting. So it was only natural that during my tenure that we would try and focus on see what we could do to reform the process. There were two reports that were out, and go from there.

And the two remaining items that I will mention will be the so-called Aircraft Carrier, and what ultimately was Regulation MA, which were really two integration efforts, and this program is about integration of the '33 Act and the '34 Act.

But I will say that Reg MA was to complete what was started, in my opinion, and, again, it had begun too. And so the predecessors, through their rule making, had tried to integrate the rules under tender offers, and mergers, and such.

But basically the whole reason that integration,

as you will hear from those people who lived through it, were that you had a bunch of independent forms, and the forms themselves had their own definitions, and the definitions didn't necessarily agree, and for purposes of this form it was defined this way, and for the purpose of another form it was defined differently.

Well, that existed all the way up until in the '98 in the M&A area. And, in fact, a senior member of the Division just told me in the last two -- last few months that the definition affiliate under 13(e)(3) is different than the definition of affiliate under Section 5.

So, we still, because of the different statutory purposes, you know, and we continue to live with that. So do we have complete integration, you know, not necessarily between the '33 Act and the Williams Act in such too.

But, you know, it's that kind of desire to try and get to one set of definitions that apply throughout the securities laws, at least the laws administered by the Division of Corporate Finance.

So, that's Reg MA was really designed to create, one sort of equivalent of Regulation S-K, which was the integrated disclosure model for the '33 and '34 Acts, but

to do it for purposes of tender offers 13(e)(3), 13(e)(4), third party tender offers, and that sort of thing. I think it went very well, and to the credit of some people that are sitting in the audience today.

The other thing is the so called Aircraft Carrier, dubbed that because of its size, and the speed at which it moved. And I only wish Alan -- and faster, nautical speed on whatever reform efforts, and I know that they're coming, but you all still have to learn the building and how things get done and the speed at which things happened. And a certain Commissioner will know how -- that I was always known as a very patient person. I was always willing to --

MR. PHILLIPS: Well, wasn't the speed affected by the comprehensiveness of it? Everybody found something to oppose.

MR. LANE: Absolutely, and the bigger a project you have, in my own personal experience, is the more difficult it is to get it out the door. Let's face it.

I'm not going to spend time, because I don't have the time, to go into what was in the Aircraft Carrier, and everybody knows about it.

And it had some ideas in there, the ones that I find that most interesting were the open communications, which I think was universally welcomed, though we have yet to see integration piece that David adopted during his tenure; and no review of the so called form Bs.

That there are certain kinds of offerings, if you trade with QUIBS, sophisticated investors, existing investors, or you're just a big company, you know, what Corp Fin doesn't review you coming in the door. Instead they'll focus on your 10K.

So instead of building at the beginning of a system, they'll do the cop on the beat by looking at your '34 Act filings of an IPO.

MR. ROWE: Brian, there were two factors involved in the Aircraft Carrier, which actually are factors throughout this four or five decades of development.

One is the SEC's penchant for forcing everything into filings with the Commission either because it subjects one to liability, or the idea that because now that we have an EDGAR System, it's on public file, anybody can look at it.

And the second is liability. Of course you can

have integration, but you've got to have liability at the same time. And I think those themes are going to be spread throughout all of our presentations.

MR. LANE: I think they are recurring themes.

MR. PHILLIPS: And would you identify those themes as the reason why the Aircraft Carrier never got away from the dock?

MR. LANE: No, I think that the problem, which interesting is, at the time that the Aircraft Carrier was proposed in 1998, the view inside the building was that it was as very deregulatory effort. Interestingly enough. I think outside the building -- and I'm getting, you know, grimaces around the table here.

(Laughter.)

MR. LANE: You know, outside this building, it was viewed as very regulatory. I mean it had some deregulatory pieces, which were welcome, but the price was too great for the Bar, and for corporate America to take.

That because there was an accelerated prospectus delivery obligation to try and give a red herring prospectus seven days in advance, and IPOs were three days in advance. There was this enhanced periodic reporting,

which is very interesting.

Of course it's now ironic that what drew the greatest fire was, you know, shortening the 10-K and 10-Q, adding more 8-K items to have to file on a five day basis rather than a 15 day basis. You know, that this cost was just too heavy to pay to get to some of the others.

There were other unpopular pieces --

MS. QUINN: I think it's probably also worth noting that at the time that this was all being proposed, you had a system, at least for large companies, from the integration efforts of the early '80s for shelf registration that essentially got large companies all the benefits, other than pay as you go, and no review of the shelf registration that got you anything that any company could want.

And so you had a substantial change in process, perhaps some additional hoops to jump through, by the very companies who really weren't looking for any relief. Which I think also was something that I think throughout the integration efforts of the last 20, 25 years, a real distinction has to be drawn between what has happened for large companies, and what's happened to the rest of the

universe.

MR. HUBER: I would add something to what Linda is saying in -- at the time that integration really got moving in '79, '80, there was a huge new development happening, it was called the Euro market, and a lot of companies were going to Europe to do their financing.

And there was a lot of concern on the part of people in the United States as to what was going to happen to U.S. securities markets.

And the Euro market -- the reason why you use the word trunch off a shelf, is that trunches were used in the Euro market all the time. There wasn't that feeling of urgency with respect to something has got to change with respect to the system in the middle 1990s.

I would also submit to you, at least from the stand point of the comment letter that I helped to author on the Aircraft Carrier. Integration was far more flexible with respect to transactions than the Aircraft Carrier. The Aircraft Carrier tried to do one size fits all, and integration was far more morphis with respect to the form of a deal from a '33 Act stand point.

MR. PHILLIPS: And the one size fits all meant

more obstacles for large companies, even though it relaxed some of the obstacles for smaller companies.

MR. HUBER: But I think Linda put her finger right on it. The big companies that use shelf registration have pretty much all they need -- it's hard to give them a whole lot more other than they have.

MR. BELLER: I think that's a crucial factor. I don't want to engage in piling on, especially since I don’t want to be at the bottom of the pile, but --

(Laughter.)

MR. HUBER: That's all right. That's all right.

MR. ROWE: Brian, will send you your personal copy of his comment letter.

(Laughter.)

MR. ROWE: But for big companies the Aircraft Carrier was in fact seen as -- rightly, or wrongly, it was perceived as risking slowing down access to the markets. As opposed to facilitating it.

And the other thing I think about the Aircraft Carrier, which hasn't been mentioned yet, is that it was -- there is, embodied in the Aircraft Carrier, a number of things which I think we still see today, and you're going

to see going into the future, the tension between delivery, filing, and access.

Not even necessarily as a liability matter, but just as the speed in how you communicate with the market as technology changes, and the manner of communications changes. And that is something which quite clearly confronts the Division and the Commission four square today.

When is access good enough; when do you need delivery; what kind of access is okay, and so forth. And that is all bound up in a lot of the provisions of the Aircraft Carrier.

MR. LANE: And it's clear that the smaller companies would have benefited the most under the Aircraft Carrier, although they still had a regime where they had to get reviewed they did have some avenues by selling to sophisticated investors and that sort of thing where they could have had advantages.

And the open communications notion, and I think the communications piece still cries out. I think that's where big companies -- I mean large companies, let's face it, on the shelf and everything, they contact us, you know,

in private sector, and ask us if they can make certain kind of communications when they're contemplating a shelf take down. And you still have some pause about what kind of communication the companies shelf.

But, again, it's not the same sort of analysis at all. It's much more open, and they didn't really need the communications opening as much, other than all the focus, let's not forget, in '96 to the late '90s was the internet. And, boom, or, you know, boondoggle, you know, opportunity for fraud sort of thing. So --

MS. QUINN: I think one other comment I would make about the effort, and it's probably something that from time to time the Commission and Staff either stub their toe on, or understand it. Is that I think the Aircraft Carrier release proposed to change virtually everything that had been done for the last 25 years. There wasn't anything that the Commission had done that was left in place.

And I think that it's very difficult to try to rewrite the entire law, particularly when there are aspects of the law that people aren't particularly disturbed about, and think work pretty well.

And it seems to me that reform efforts probably work best, even if they're is broad based as what the Aircraft Carrier was.

If you look back in 1979, and '80, and '81, when Ed was Director, and John was in the Division. That effort was as broad based as anything in the Aircraft Carrier, but it built on what had been accomplished. It didn't blow everything up and then try to rebuild it.

And I would think that in addition to sort of the difficult choices that were having to be made in the Aircraft Carrier release. I think one makes things very difficult when you say let's erase the slate and start over, as opposed to build on what's been successful, and keep -- the cost of change is enormous, not only for the regulator, but the regulated. And the less you have to change, and where you can build on something that already exists, maybe something where people will say the costs are much more reasonable than starting all over.

MR. LANE: It clearly is more difficult to have to do something from scratch.

MR. PHILLIPS: It is a fact of life that regulated entities learn to live with a pattern of

regulation, and within the financial community carve out competitive niches where they perceive that they have an advantage under the existing regulatory regime.

Thus, proposed changes in the regime are looked at with a presumption of disfavor because it might disturb their way of doing business, and even worse, it may threaten the competitive advantage. There is a great resistance to change out there when times are good.

MR. ROWE: I think we'll hear more of this, but I think we ought to move on. Brian, if you could wrap up in a couple of minutes.

MR. LANE: Well, that was it.

MR. ROWE: That's it, okay.

(Laughter.)

MR. LANE: How's that, you know, for a wrap up.

MR. ROWE: All right. Let's move back.

Since I wasn't here as a director in the '60s, my co-moderator was here, but not as a director either; he has assigned me the '60s. Really not too much to say, but just to point out some of the highlights of integration that occurred in the '60s.

Dick Phillips has already talked about

Frear-Fulbright, the Special Study, and how that brought the over the counter companies under the ’34 Act reporting requirement.

I would just point out one other thing. That was the beginning of the power of the NASD over the offering process and listing of companies on the NASDAQ Market. It all really started back then.

In '66, although this is not a Commission action, or a Staff action. There was a seminal article in the Harvard Law Review by Milton Cohen, “Truth In Securities Revisited.”

If you revisit that article, you will see that in those days he was thinking of things that we haven't even reached today. The Commission is considering having 8Ks filed within one day of a list of very important events.

Milton was thinking of having the company's computers hooked up to the Commission's computers and having real time disclosure. So we have a long way to go I think to catch up. But his ideas germinated and got other people thinking about these systems and moved on.

We may hear more about this in other decades, but I think it was 1967 where the American Law Institute

project for the codification of the Federal Securities Laws got under way.

Finally -- well, there was actually a short form registration statement. Putting "short form" in quotes for seasoned companies called S-7. My recollection is about the only thing you didn't have to disclose there was background information about the management, the compensation, those sorts of things because on the theory that that's in the proxy statement and the shareholders of these kinds of companies are going to get the proxy statements. So it's sort of an integration.

MR. PHILLIPS: Yes, and there was at that time a great deal of hesitation on the part of the Commission in distinguishing between large, or seasoned companies, and other companies on the ground that it may get the Commission involved in merit regulation and depart from its disclosure neutrality position.

Accordingly, the Commission was very reluctant to draw distinctions between different qualities of companies, and qualities of disclosure.

MR. ROWE: What may have been the most important event of this decade for our purposes of this discussion

was what we've had been alluding to here as the Wheat Report. Richard was the Executive Director, I was on -- I was Frank Wheat's legal assistant, and I was also on the staff.

Lest you think that the report was written by Frank's staff, you're mistaken. A Commission staffer named Bernie Wexler wrote the introduction. I think I wrote a chapter on the annual report to shareholders, and Frank Wheat, after the close of business, wrote this thing in his office.

If you went into his office you would see the paper. Let's say it's a quarter of the size of this room, the entire room would be covered with papers on the floor. He wouldn't let anybody go in to clean up his room. And he literally wrote that entire report, except for two chapters.

But that report, really the genesis of what started to happen in the 1970s; Rule 144, quarterly reporting, which was unheard of up until then. Suggestions for short form reporting.

And the gentleman on my left became Director in 1970, and had a large hand in implementing Frank Wheat's

recommendation. Alan.

MR. HUBER: If I can just add one thing to the '60s, because when we did the history of the Shelf Rule, the first part of it was S-8, but one of the most significant things with respect to the development of shelf registration, was in the late 1960s, which was a period of M&A activity where you had acquisition shelfs.

And we traced the first step of a true acquisition Shelf -- sort of like finding dinosaur bones. Okay. The true acquisition shelf began in 1968 with a big company acquiring a whole series of smaller companies in stock for stock kinds of things.

MR. ROWE: Alan.

MR. LEVENSON: Dick has assigned me three areas, namely quarterly reporting; second, resale of restricted securities; and, third, the industrial issuers report which occurred in the 1972 period.

MR. PHILLIPS: Alan, you're not constrained, you can talk about anything you want.

(Laughter.)

MR. LEVENSON: Thank you, Dick. First, there are several points I would like to underscore. Whether it's

creating disclosure concepts, implementing disclosure concepts, or enforcing disclosure concepts, the approach has always been a team approach.

You learn from the staff, you learn from predecessors, and you learn from those outside the Commission, as well as the Commissioners themselves. So that's number one.

Nobody created America, it's an amalgam. The Commission works along the same lines.

Secondly, when we talk about integration of disclosure under the '33, '34 Act, or, integration, disclosure '33 Act, methods of distribution in terms of disclosure '33 Act, and regulatory provisions, '34 Act. I've always viewed integration as a means to implement policy rather than a policy.

For example, whether it's a registration for an initial public offering, a repeat offering, a secondary offering, I viewed the policy to promote capital formation. Integration was the means. Like there were other means to do that.

When we talk about secondary market sales, whether it's restricted securities or otherwise, again,

integration, which was utilized in Rule 144, for example, was a means to an end. It wasn't an end.

It's the same thing in terms of means when you talk about not rule making, but informal procedures. Whether it's the no action letter, whether it's the interpretive letter, whether it's the letter of comments, whether it's the oral letter of comments, these were means to facilitate the programs that initially the Registration Division -- that's what Corp Fin was first called when the '33 Act was administered by the Federal Trade Commission in 1933. And it came over to the Commission when it was set up as the Registration Division. It became Corp Fin later on.

But these informal means were just that, to facilitate capital, to try and ensure a full and fair disclosure for investment decision. To try and protect investors. To try and create liquidity in our secondary markets for resale of restricted of securities.

Having said that, and now focusing on the means, integration, it brings me to one of my reassigned topics. Rule 144, resale of restricted securities.

Dick Rowe pointed out that literally the creator

behind that rule was Frank Wheat and his team. Dick Phillips was staff director. Dick Rowe was Frank's legal assistant, but they came up with the concepts. And let me tell you why those concepts were important from a historical stand point.

There was uncertainty for resale of restricted securities. It was all being done by no action letters. No action letters focused on was there a change in circumstance of the holder. Then the question became, for the Chief Counsel's Office in Corp Fin, what constituted a change in circumstance.

MR. ROWE: George Michaely said death.

(Laughter.)

MR. LEVENSON: And I might say that one of his successors took the position that not even death was a change in circumstance, since it was foreseeable.

(Laughter.)

MR. PHILLIPS: And you take something like cancer, somebody gets cancer. Well, it was foreseeable, did he smoke. Did cancer run in the family. If, in fact, cancer did not run in the family, didn't smoke, maybe it wasn't foreseeable. Give him a no action letter so he can

enjoy life.

But if he needs it because it -- there was cancer in the family, et cetera, et cetera, forget it. That was foreseeable.

It was a bad test to administer from a regulatory point of view, and it was left to private practitioners to do most of the administration. And I can tell you for the time I was a private practitioner living under this test, it was the most unpleasant kind of work. I used to leave it for Friday afternoon and had a rule that I would not leave the office until I made a decision on those letters on my desk because I couldn't face it on Monday.

MR. LEVENSON: Dick had a change in circumstance.

(Laughter.)

MR. LEVENSON: In any event, getting back to the context. There was uncertainty. There was a lack of objective standards, and literally it became embarrassing to administer a program as to when somebody can sell restricted securities and under what circumstances when a person would write in my husband recently died, I have a bad kidney, my child just got run over. And yet it went

on, and on, and on, and nothing really was that effective at the time.

MR. PHILLIPS: The no-action letter requests used to have x-rays attached to them.

MR. LEVENSON: Well, Frank Wheat and his tame came up with the Rule 160 Series. Which basically was designed to set objective standards as to when restricted securities could be sold.

And for restricted securities we're talking about two components. A, unregistered stock taken by nonaffiliates, and, B, whether registered or unregistered stock taken by affiliates. Both were going to be covered.

In connection with the 160 Series, there was a five cut-off after which a person was free to sell securities without a quantity of limitation.

Now, the Commission changed at that point, and at that point the Chairman was Hamer Budge when the 144 Rule was being considered. And Hamer felt it was very important to have a simple rule. You shouldn't have to go on to pages and pages and pages under what circumstances you should be able to sell at all. Give me one page, Alan, and that's it.

We had sent up a rule for varying classifications, gifts, legends, conversions, affiliates, nonaffiliates, holding periods, manner of sale; no way.

So the first draft of Rule 144 was rejected in total with the message make it simple. "A simple" rule went up, and by that time Hamer Budge was no longer chairman.

(Laughter.)

MR. LEVENSON: And at that point additional provisions were added to 144, which eventually went out for comments, were revised, and that was the birth of 144.

Now, how does integration come into it; from a policy stand point while the staff was doing away with change of circumstance and trying to create objective standards, certainty.

From a policy standpoint there was the strongly held belief there ought to be public information available when you sell unregistered stock, and that became a key component and a condition.

If you were a registered company, you had to file all reports required to be filed the last 90 days. If you weren't a registered company, what we did was hook it into

disclosure provisions. In the '34 Act, when a dealer can start initiating quotes, i.e., 15 C-2-11.

So that was the integration between '33 and '34 Acts.

I might say at the time that 144 was done, Irv and Stanley felt we were giving away the Act. Don't give them a blue print for fraud. And as a result, on the notice of 144 we had a box which said -- I used to call this Irv's box. That box said it's a criminal violation to file a form if it's false and misleading under 1001. That was the prophylactic at the time.

By the way, I might say the rule has been modified over the years and the holding period was decreased from two years to one year. It became a two year cut-off at the end of which non-affiliates could sell without a quantity limitation, and other changes.

MR. PHILLIPS: But what happened to the box?

MR. ROWE: As the moderator, I should point out, because this is being taped, that Irv and Stanley are Irving Pollack, a former Commissioner and former Director of the Trading and Exchange Division and of the Division of Enforcement. And Stanley Sporkin, who needs no

introduction.

MR. PHILLIPS: What happened to Irv's box over the years?

MR. LEVENSON: Well, I might say that whenever I had a tough one to try and resolve, I always consulted Irv Pollack. I found that his knowledge and information -- he used to have a little card catalog, was always very helpful, and I always was told about fiduciary duty by the time I left his office.

In any event, I want to get on 10-Q. 10-Q, pull the report, we knew they pull a report. We had a semi-annual report on Four-9K, and a 10-Q report, that created all sorts of havoc.

And why did it create havoc; because there was legitimate concerns about liability. Certain companies's business was seasonal. For example, one of the two baseball teams that we had in, they had their big season, you know, from spring through September, but the winter was a disaster. And they were concerned about the volatility in terms of their earnings.

Number two, it was going to be unaudited. So what we did in terms of 10-Q as part of the instructions to

the form, we made the quarterly report when we rescinded 9-K a non-filed document because of the financials. And that was very important.

Even though when we talk about a non-filed document, we're talking about Section 18, liability, and whoever recalls a case under Section 18. They're very sparse, if any at all.

MR. ROWE: Alan, unfortunately there is a -- this is -- I'll tell a story. There is a District Court here in Washington who misread that and said it's not subject to 10 b-5, and the then General Counsel, who was not the present Chairman, came down to my office when I was Director and just read me the riot act saying how could you ever have adopted this out for these people.

So not only didn't the Court understand what you were trying to achieve, but the then General Counsel of the Commission didn't understand.

MR. LEVENSON: Well, for everything there is a season.

(Laughter.)

MR. LEVENSON: On the 10-Q, that's why we created that it wasn't a filed document because of the concerns of

liability of the unaudited numbers. And then as it's evolved --revenue recognition

MR. ROWE: But you were giving away nothing, as you pointed out.

MR. LEVENSON: As it evolved, you have part I, part II. Part II is subject to liability, part I generally is not, unless it otherwise contains information about Part II.

But in any event, that was the history behind it. We had a terrific focus by the Bar at the time, which has always been very helpful, on two things. Adopt Rule 144, screaming about Form 10-Q. What did we do; we adopted 10-Q, and then we went to Rule 144 basically because we wanted the public information out there, and shortly thereafter, we adopted 144 so that the public information was out there.

From a legal standpoint there was one major issue on Rule 144, getting back to 144. Should the rule be exclusive, or nonexclusive. And I remember at the time we kicked this around because the issue became one of authority.

If you can resell under Section 4(1), how can you

ever make something exclusive? And the way we came out was that why get into that authority question since our purpose was to create objective standards, create certainty, and it would be the unusual circumstance that somebody would go outside the rule unless we did the rule in the wrong way. Then we'd have to revise it, and we should revise it. So we made the rule nonexclusive.

Industrial issues report, we had guidelines for the preparation registration statements, but we hadn't focused on the '34 Act. Bill Casey set up advisory committees, one of which was the industrial issues advisory committee. Dick Rowe was secretary to the committee.

And amongst its recommendations was create guides for the preparation of the '34 Act reports. They also focused on distribution, and it had made a contribution as well.

In closing, there is one other aspect of integration which doesn't have to do with the integration of '33 and '34 Acts, but has to do with integration administratively.

And that was during this period of time each Division at the Commission had the equivalent of an

enforcement office. Corp Reg had it -- at that time Corp Reg had its enforcement office. Corp Fin had its enforcement office, Trading and Markets had an enforcement office.

And it was decided let's have an Enforcement Division. We would integrate all the enforcement offices, take them out of existing Divisions, and make one Division of Enforcement.

The arguments were at the time, first, the positive one, you'd see an overall picture of enforcement and be able to create priorities. The negative argument at the time was you would be creating too much power in one division. There was always concern about it. Each Director felt that they ought to keep their own staff, and it would be easier and more efficient to implement within their division.

I always felt look at the whole picture. So I was in favor of an Enforcement Division, but there was mixed views at the time. But that was integration, but it was integration from an administrative standpoint.

At this point I turn it back to Dick.

MR. ROWE: Not as moderator this time, but as the

successor director to Alan. The three years that I was director the Commission and its staff didn't do very much in this area. The seeds were planted, but there wasn't much happening in this area, disclosure integration.

Let me tell you what I think the reasons were. One, in 1975, the Commission passed major legislation to reform the securities markets. The Commission had to focus on the implementation of the '75 Act amendments.

Two, the Commission was very much interested in enforcement in this new Enforcement Division, or not so new at that time, I guess four or five years old. But Enforcement was something that the Commission was focused on. In many ways its more exciting and easier to focus on if you're a Commissioner sitting up there than looking at rules.

Three, as John Huber will remember, the Commission had been operating under temporary rules in the tender offer area every since the Williams Act was enacted, and we had a mandate from the Commission to get permanent tender offer rules out there. It all got started when I was there. John was the rule maker, and it got adopted I guess when Ed took over. But we were working on it for

quite some time.

MR. LEVENSON: I might say about those temporary rules.

(Laughter.)

MR. LEVENSON: When I was there, I was second in the Division at that time, and I got call from the then Chairman, Manny Cohen, who said we just bounced the Division's tender offer rules. The whole package. And we want -- this was a Friday. We want you to write a set -- wasn't involved at all in it. It was a different associate director at the time.

We want you to write a set that we don't have to make one change to on Monday, and you have until Monday. Today is Friday afternoon. And if we have to make a change, look for a job outside the Commission.

(Laughter.)

MR. LEVENSON: Fortunately for me, a change wasn't made, and I didn't have to look for a job. But that's how the tender offer temporary rules were written.

MR. HUBER: And the permanent ones took three years, but they were written with a lot of changes to say the least.

MR. ROWE: The other events that contributed to a lack of -- I'll call it a lack of interest in the Commission in these kinds of subjects. The people that we have been talking about, Manny Cohen, and Barney Woodside, and Frank Wheat, and Al Sommer were gone from the Commission. You really didn't have anybody who had the background in this area, or the interest.

And I will say that there is probably going to be in those days a little bit of resistance at the Staff level too. They needed some convincing.

I always tell the story about -- and this shows how much power Directors have. I went to one of my assistant directors and I said, you know, merger proxies are just terrible. They go on, and on, and how can anybody ever understand them. By the way, that's still true today.

But I said you are assigned the task of developing a new set of rules for merger proxies so that we can have a very simple document that people can understand. And then I went off and I was doing other things, and I -- it may have been six months or a year later I came back and I said, well, how is the project coming along.

And in those days the Commission had just started using sophisticated word processing. She said, well, there was an electrical short in the word processor and the entire document was eaten.

(Laughter.)

MR. ROWE: I dropped that project to the back burner, and never knew what happened.

In any event, the -- but in the last part of this decade, there were pressures on the Commission to change the system. There was a Federal Securities Code sitting out there that would have changed the system. The Wall Street community wanted to change the system.

And the Commission had to do something. So they did what a lot of Commissions do. They said we'll study the subject, and they appointed Al Sommer to the head of an Advisory Committee on Corporate Disclosure. They gave him a staff, Mickey Beach, who was an associate director in Corp Fin headed up the staff.

And that went on for several years, and they came up with a number of recommendations at the end. It got Al a little angry at times because we would see -- the staff would see drafts of what was going on in their reports.

They happily gave them to us.

So we'd go along and I guess cherry picking is probably the word for it. We'd cherry pick something out and go to the Commission and say would you like form S-16, would you adopt this now. And Al had envisioned this great report that would all get implemented at the same time, but we sort of picked it apart along the way.

But it actually, when we got to Ed, it actually laid a lot of the foundation for what came later, and the people who worked on that study, and especially Al, deserve a hell of a lot of credit.

Another thing that was distracting the Commission in those days is projections. I believe that was touched on in the Wheat Report, but there was pressure to permit projections, not a mandate because the Commission didn't want to mandate.

So the Staff did a study and it developed guidelines which were ultimately I think adopted by the Commission as the Commission's guidelines, again, when Ed was there.

But that was also distracting because we held hearings, and it was a long drawn out project.

So although Al's committee laid a lot of the foundation, what came later was much more important, and that was under Ed and his successor.

MR. HUBER: If I can just add something to that period. S-16, and the significance of S-16 should really not be underrated in any shape or form. When we did the research on a short form registration statement that used incorporation by reference from something other than an exhibit to that registration statement, the example was not S-7, not S-9, it was S-16.

And when we did the research on why there were only three S-16s in one fiscal year, the answer that came back was that underwriters didn't want to use that for a public offering.

And so S-16 was in essence the first practical kind of experiment in a short form registration statement and gave a great deal of experience in learning to the staff later on.

MR. ROWE: One further point on Al's study. That was the study that focused on what's called the efficient market theory. That if the information is available to the market place, whether it's in a prospectus or a '34 Act

report, or indeed in a press release, then the market will absorb that and the price will be appropriate price assuming there hasn't been fraud or something of that nature.

And that helped lay the policy and economic foundation for what came later. Ed.

MR. GREENE: I became Director under Harold Williams, and he was committed to trying to implement the recommendation for the Advisory Committee. And there were two things that characterized my tenure.

One, in trying to take advantage of some of the initiatives that had started before, but to secondly to deal with the problem of increasing workload in the Division where the filings were increasing.

Integration was initially sought as a way of trying to eliminate duplicative reporting with respect to what companies had to do. It also became the way of giving us the capacity to develop shelf registration, which was really trying to address giving ourselves a little control of our time.

Every Director coming in doesn't come in with the blank slate. We came and we were faced with the Advisory

Committee. Regulation S-K had been identified as the core repository for disclosure requirements for documents under both Acts, but it only had six items in it.

And you remember there were two strands of integration. One is '33, '34 Act, but there is also the annual report to shareholders. Now the Advisory Committee had said simply let's just have one document and we'll use it for the annual report and the 10-K.

That was kind of the heritage we had. Now, to achieve this, you could have done something quite simply. You could have simply said we'll take the '33 Act disclosure requirements, mandate that for '34 Act annual reports, and we're done.

But we began to look at it, and we had three major rule making initiatives. In January, 1980, in September, 1980, and then in August, 1981, and in September, I became General Counsel, and Lee Spencer then became the Director.

The first -- and we approached it in a sense by contrasting, for example, to the Aircraft Carrier. We had a proposal set forth, but they were separate releases. So the first major proposal in January was to propose a

revised Form 10-K and the Annual Report to shareholders. But we increased the disclosure requirements.

Rather than simply taking what was there we decided that we really had to come up with a concept of a basic disclosure package which would be relevant both for '34 Act trading, and for '33 Act distributions.

So we added to Regulation S-K, which would be incorporated in the 10-K and the Annual Report to shareholders the management's discussion and analysis, selected financial data, market price of securities over a period of time, statement of dividend policy, and some amendments to the business description. These were proposed.

We then outlined what we thought the integrated disclosure system should look like, and we built on the Advisory Committee's recommendation that you classify issuers into three classes.

We then proposed form S-15 for short form mergers, which would take advantage of both integration, but would use the Annual Report to shareholders as the delivery document together with a short form because one thing we focused was that the annual report under our

approach became the key document rather than 10-K.

We then proposed uniform requirements for financial statements because S-7 had five years, S-1 had three years, S-8 and 10-K had two years. They were all different.

And we also proposed revisions to Regulation S-X. Why? Well, the Annual Report to shareholders only had to be prepared following U.S. generally accepted accounting principles. Documents filed with the SEC had to comply with S-X, and there was sometimes differences, overlaps, and inconsistency, and the idea was to try to streamline and make it simple.

We put that out for comment, and then back in September, 1980, we adopted the amendments to Form 10-K. And, again, the key aspect of that was the requirement that management must analyze its financial results. It was the adoption of the 10-K as proposed.

We adopted uniform financial statement requirements, which is three years of income statements, two years of balance sheets. S-K was revised to include the items we had proposed. Form S-15 was adopted.

We also took advantage of Form 10-Q, and we said

you ought to have the same requirements for quarterly reporting whether it's filed under '34 Act, or included in the registration statement. So they were made the same.

And then we came up with new registration forms, imaginatively named A, B, and C.

MR. HUBER: Just as a note with respect to 10-K, one of the most controversial things about 10-K was the majority of the board of directors had to sign the 10-K.

MR. GREENE: Yes.

MR. HUBER: And that was the building block, if you will, for incorporation by reference into a '33 Act registration statement, the '33 Act requiring the majority of the board of directors to sign the registration statement.

MR. GREENE: We also thought that we would develop the concept of a basic information package. And the basic information package would consist of the audited financial statements, selected financial data, the MD&A, and certain information about the trading -- and the hope was that that basic package would be included both in the Annual Report to shareholders, and in the 10-K.

The 10-K with other parts, which we thought was

designed for a different market. A sophisticated market, the analyst market, and we were concerned that we didn't want to mandate the 10-K to be equivalent to the Annual Report to shareholders because the suspense of preparation and delivery.

And we thought was that by identifying that package we would see the annual report be the delivery document. Why, because it was readable and comprehensible where the 10-K wasn't.

And that's why S-15, the requirement was that you deliver the Annual Report to shareholders, and our famous Form B contemplated that you deliver the Annual Report to shareholders rather than the 10-K in the context of going forward.

So we did change the emphasis of the Advisory Committee report from the Form 10-K to the basic disclosure package. The A, B, C release highlighted two questions for comment. What information is material to investment decision from the context of public offering, and under what circumstances and in what form should that material information be disseminated.

Now we used in those days the efficient market

hypothesis for trying to come up with answers to that. Today, if we were operating, I think we would frame the questions entirely different. It would be access versus delivery in terms of information. But in those days we didn't have the access to the information.

Now then we started to go forward by revising S-K once again. In December 1980, we basically put out a revised structure of S-K, and we thought we would revise the guides by eliminating them, the guides to registration, and putting them either in Regulation C, the procedural thing, or eliminate them.

Or, in one case, we proposed to change Guide 4, which was the guide that permitted in an acquisition context shelf registration for continuous offerings.

We reproposed that as Rule 462(a), and that was a revolutionary rule because it was going to basically take advantage of S-16 and Guide 4, but generally say that companies of a certain size would be able to register securities in advance.

And, again, it dealt with some of the ways that have characterized how the agency is operated, and that is administrative flexibility. Because the assumption has been

that the amendments to legislation are difficult to obtain and can hold back reform.

Two of the most elegant were, first, incorporation by reference. Why does that happen; the '33 Act says you have to deliver a prospectus with a confirmation, but it doesn't say how the information has to get into the prospectus, and incorporation by reference is a very elegant way of saying you comply with the Act.

Secondly, we had to deal with Section 6(a) under the Act, which says that a registration statement shall be deemed effective only as the securities specified therein to be proposed to be offered.

Now how can you have a shelf system that has securities that will be offered up to two years in the future, if then, and how would that be consistent with 6(a). Well, we blinked a bit, and thought that as long as registration statement identified the securities, and we had a time period which was two years; we thought that was a way to address what the issue was.

MR. HUBER: We also got a opinion from the General Counsel's that we were in compliance with that --

MR. GREENE: I know that.

(Laughter.)

MR. GREENE: Now, in a sense we had trying to do a great deal, and what we did get blind sided a bit was that when you put out a release saying you're going to revise the guides to the preparation for registration statement no one reads it.

And within that lease, as I said, was buried this proposal with respect to shelf, and the Bar came back and said you can't do that that way. You've got to basically address this because this has profound implications for how securities are distributed, and it raises again the issue of liability in the context of relying upon documents that underwriters aren't involved at the time they are filed. What date does liability speak to, what responsibility do we have in integrated system.

And we took those comments seriously, and then in August we put out eight proposals, which I think in the sense were the end of the integration proposals that had been building from the Wheat Report, through the Advisory Committee, through the ABA Federal Regulations of Securities Commmittee.

We decided that Form A, B, and C didn't make much

sense. So we came up with even more imaginative S-1, S-2, and S-3. We reproposed S-K with substantial input from the private sector.

In this regard, what others have emphasized is that the Bar realized we were serious and we were trying to make this simple and work. And they gave us enormous input into how we could reconfigure S-K because we really got it wrong when we put it out, but as adopted it really makes sense.

MR. ROWE: Yes, I remember at that time Warren Greenberger was head of the Federal Regulation of Securities Committee, and had actually moved from Chicago to Washington so he could spend more time on that Committee.

And I got part of that project on the committee to, not really substantive, but to work on restructuring moving guides that should be kept into S-K, and the Commission used pretty much of the letter that --

MR. GREENE: They did.

MR. ROWE: -- the Bar submitted.

MR. GREENE: The Bar, and --

MR. ROWE: On a non-substantive basis.

MR. GREENE: But the Bar, and Sullivan Cromwell also made an enormous contribution coming forward. Because if you think back, this was an enormous effort with eight releases. And we were hard working, but you don't obviously get it right without a great deal of help.

We then did some technical amendments to Regulation C, and we reproposed shelf registration. We were convinced that this was the way forward for two reasons.

First, it really did help the Commission and the Division deal with its work flow because the idea was let these securities be registered in advance, giving us control, and not be subject to the tyranny of public offerings through registration statements when they're filed.

Secondly, we thought that there was the intellectual frame work in terms of the efficient market theory. But we realized that this might lead to changes, and it really deserved another hearing. So we put it back out for comment.

MR. PHILLIPS: Ed, you've talked a lot about eliminating the content, or informational disparities

between '33 and '34 Act disclosure requirements. But you've also talked about Commission work load.

What, if anything, was done to eliminate, or to reduce the disparity in Commission review between '33 Act, and '34 Act filings?

MR. GREENE: We tried, and there was an an interesting article I went back to read that was published in one of Bob Mundheim's Journals.

And we tried to do three things. One, is we decided that we had a crazy system in which a branch would get a filing assigned simply by the date it was filed. We thought it made sense to have branches review companies in the same industry branch specialization. We had someone from the Harvard Business School come in to help us put that in place.

Secondly, we decided that we would develop selective review criteria. We had to sit down and decide internally which filings would be reviewed.

Third, we thought with seasoned companies, if they could have shelf registration, the reality would be that we would look at that, if at all, when the shelf was filed, but not worry about the take down, because, as John

said, the terrible pressure we were under when the earmark was developing, we were told that if we didn't process a registration statement in two days on the debt side, it would go elsewhere. And we simply were between a rock and a hard place to try to come up with a comment and deal with it in that time. It was just simply unacceptable.

So we never quite got it right, and I think every Director before, and since, has had to deal with the problem that you have a very hard time deciding how to allocate time among various Staff functions, because the assumption has always been that IPOs must be reviewed. And if you had any kind of a bull market that's going to basically take your time and what you have left over you can allocate.

MR. PHILLIPS: But it seems to me that what you did to reduce the disparity in staff examination was to let up on '33 Act examinations by adopting these selective review criteria, but nothing was done to enhance the amount of resources put into '34 Act examinations.

MR. GREENE: No, I think --

MR. PHILLIPS: Is that fair, or unfair?

MR. GREENE: I think in fact each Director would

sit down and set guidelines as to how much should review. The problem is you can't control your own destiny.

MR. HUBER: I would actually say it's unfair because I actually started out as an examiner in 1975, in the branch number two of the Division, and I can tell you that they didn't review every registration statement in 1975.

As a matter of fact, they had so many different kinds of review in terms of a monitor, in terms of a full review, that the Division had this issue for a long, long time. And what Ed did as Division Director, was industry specialization was an improvement because, for example, insurance companies have got special GAAP, and knowing that is important. Banks, okay, in terms of reserves.

The fact of the matter is though that selective review was, in essence, formalization of a way to in essence manage a workload that was increasing with no larger staff.

MR. GREENE: And the big issue was to really whether you should release publicly what the criteria were for selective review. And the answer was always no, on the theory that that would be a road map. But it was always

the pressure.

And to complete that package, which was probably, as I said, the end, we proposed Rule 176 describing circumstances to be taken into account in terms of people conducting due diligence in the context of an integrated disclosure system relying upon '34 Act reports incorporated into '33 Act documents where the liability difference is striking.

The '33 Act company has absolute liability, and the directors and the underwriters have full responsibility unless they can show that they conducted a reasonable investigation.

And the question posed by the underwriters was we never saw this document when it was filed. We have now got full responsibility for it. Shouldn't you basically help us deal with that, and there were various proposals.

The SIA submitted two proposals, one of which said if we need it, and it seems to make sense on its face, we're not otherwise aware of a problem, that should be enough.

Well, the Staff and the Commission have always said two things with respect to the integrated disclosure

system: that it is designed to simplify the disclosure of issuers, but it is not designed to change the liability system put in place, and, secondly, underwriters have to make the decision as to whether they want to go forward, or not.

Nothing in this system compels underwriters to go if they're not otherwise comfortable with the time they have to conduct due diligence. That was our response.

The response back was the market will continue to drive us to go quickly, more quickly and more quickly, and that in a sense you're putting the burden on as gatekeepers. That is unfair because what you've done is take us out of the process because the issuers can prepare these documents without our involvement, we file, and you can't make changes after you've filed.

And it was this idea of a debate between the underwriters as gatekeepers, and the issuers who were very, very happy with this system that put pressure on us. But we -- all of us thought we could do was to take this forwarded Rule 176, and, again, to illustrate the point, it built on other initiatives because the Advisory Committee had proposed a comparable rule which we used and changed.

So we didn't have to in a sense go out naked. We could go back to an Advisory Committee that Al Sommer chaired, and otherwise.

At the same time, there was the project to codify the securities laws. A long time coming. And it's interesting how the wind went out of the sails of that project.

I think in part because at the end of this time, in August, 1981, we really had accomplished an enormous simplification, had basically proposed that issuers could to the market, and had dealt with some of the criticisms that had led to trying to integrate the statute.

MR. HUBER: Rule 176 was very significant because it literally was a recognition by the Commission of a liability concern. And there was an article that was printed in the Notre Dame Law Review by Mr. Greene and a person from my office, Greg Matthew. That should always be read in preparing material with 176 because the dialectic for 176 is sitting in that --

MR. GREENE: We did that just to try to put forward the Commission's point of view because we were really getting hammered badly by the investment banking

community. Because the more they saw of this rule, the more they opposed it.

As John will explain the investment bankers saw that this could profoundly alter how securities were being distributed, and they weren't quite sure that they were on board.

At that point we had an election, and I turned it over to Lee Spencer, who couldn't be here today. I must say throughout this effort I was enormously blessed because Linda was with us, John Huber was with us, Mike Connell, who is not here, was with us, and Lee Spencer.

And when you've got people like that these rule making activities took an enormous amount of time and effort, but we had I think one of the most talented staff that I've worked with over the years. And at the end I think we all look back and are quite proud of what we have done.

MR. PHILLIPS: Let's take a break. When we come back, I'd like to focus on two issues that I'm not sure have been dealt with.

Why was 176 significant, other than it being the first time the Commission recognized the liability problem.

Does it really have any important impact, looking at it in hindsight.

And, number two, what, if anything was done, having made great strides towards integrating; what, if anything, was done to improve the quality of '34 Act reporting to get it closer to the level of '33 Act.

To me, those are two very important issues that need to be examined because I think to some extent they are still critically important issues today.

MR. ROWE: We'll take a break now, and if everybody could be back in their seats at no later than a quarter of 4:00.

(A brief break was taken.)

MR. ROWE: We're on a tight time schedule, so I think we'll pick up, and the next Director, in chronological order, Lee Spencer, is not here, so that John Huber, his successor, will do double duty.

MR. PHILLIPS: Yes, before you start, Ed wants to make a --

MR. GREENE: Well, I would go back to Dick Phillips said before the break. We improved dramatically the disclosure in '34 Act documents. The question is how

do you assure compliance with the improved disclosure. In the '33 Act you review a registration statement and your power of acceleration gives you the power to improve.

MR. PHILLIPS: And you have underwriters.

MR. GREENE: Underwriters. On the '34 Act we did two things. One is we thought by having the directors sign it, they would take the document more seriously.

Secondly, we thought that the incorporation by reference into the prospectus giving it Section 11 liability would be a discipline to the system, but we recognized that with the review it would have to be an after the fact review as opposed to before, and there was always going to be some tension.

So, in fact, we probably never were going to be able to get the '34 Act compliance up to where '33 Act was, but we had to do something, and these were the measures we put in place as an equivalent.

John will talk about Rule 176. The importance was that we had to acknowledge that this was a different system going forward, and to give some factors, but we were resolute in the view that we weren't going to create safe harbors for due diligence - that we could not define what

you should or should not do, much the way the Commission has always resisted trying to sort of spell out what would be a complete safe harbor for liability.

And then I'll turn it over to John.

MR. HUBER: Yes, first of all, in terms of my tenure while I was Division Director from 1983, to April, of 1986. I was Deputy Director from 1981, to 1983, when Ed became General Counsel, and Lee B. Spencer, Jr., became the Director. I was his deputy director. So I'm sorry Lee is not here. He actually was part of this team, and a rather important member in terms of what I always called common sense in terms of looking at something and giving you a practical deals perspective.

So I'm going to take it in terms of both his tenure and mine, but I want to go back to Rule 176, and I want to also include one of my assigned topics with respect to 176, and that's Rule 412.

One of the hallmarks of integration in terms of just the idea of getting it through was that it had aspects of it that were going to be different. For a lot of people the aspects were very controversial.

If you look at the programs that have not -- have

been proposed and did not work, okay, Lou Loss' Code. If you look at the Wallman report they often will have a problem with respect to liability. The Wallman report had an issue with respect to liability too.

The significance of integration was that not only did the Commission understand that liability was an issue, the Commission, and the Corp Fin staff, took the initiative with respect to addressing the liability concerns.

Rule 176 was the first time that anybody had ever done that by rule. 412 -- and there are a couple of rules that I really want to flag. 410(g), a very little known rule, but if you give appearances to form, and I have been in private practice now for --

MR. ROWE: You might explain what those are.

MR. HUBER: Yes, I'm going. I'm going. 410(g) basically says you're on the right form if you're declared effective. That was a liability rule.

412, the concept of a modifying or superseding statement to a filing. In other words, what 412 does is to say if you have a subsequent filing, and the statements in there modify or supersede prior statements, the later one will be taken.

And significantly, when you read the second part of 412, you'll see that you don't have to say this statement modifies or supersedes another statement. As a matter of fact, what it does is specifically say you don't have to do that, which means that from a liability stand point you, as the company, or you as the underwriter, have got the ability to say look at the later filing, it is a modifying or superseding statement under 412.

That is a significant point. That was something the Commission initiated as opposed to other people bringing it to the Commission's attention.

So, before getting into my other assigned tasks, I'd like to make three really preliminary points. You've heard two types of teams so far. You've had Alan Levenson talk about the team of the Commission with private practitioners and companies. You had Ed talk about the team that actually built these rules.

I want to also point out there was another team during integration, and that was the team of the Division of Corporation Finance, because in terms of actually having day to day touch with what was happening in filings, the rulemakers, almost all of whom came from operations, could

walk down the hall and ask people with 20, 30 years of experience what their experience was with respect to a particular filing. It was a tremendous resource.

When asset-backed securities were starting in the late 1970s, and Salomon Brothers walked in and said that they were thinking about mortgage-backed securities, the ability of the Division to adjust to that sort of thing, which became part of the Shelf Rule, was in large part due to the experience level of the front office, and also operations. This is one example.

Drafts of these releases were circulated to people in operations for their comment. And that really was part and parcel of the reason why this project was in my mind so successful was that it was a team effort from the stand point of all of the Division.

The Division consulted with other Divisions. We got an opinion on every rule, okay, from the General Counsel's Office with respect to validity. We consulted with Enforcement. All of those things were done, but in terms of the R&D effort, and in terms of the look of it, the team was Corp Fin.

Second point. We built, really from 1980, on.

We built something that had been talked about for years, the dialectic. In essence the theory was already there. What this team did was to put it into practice. In other words, it's sort of like saying, gee, that sounds like a great idea, now go do it.

We were the people that were tasked with the doing of it. And it was a very important thing not to put it in one release. In other words, we procedurally this was the kind of program that had a hallmark of total reactive flexibility.

And in terms of being in charge of it, the rulemaking office that did this, this is the kind of thing that releases came out like conveyor belt; got comments from the outside, we adjusted, and then went back again.

And one of the most important points here is that Rule 415, which started out as Rule 462(k)(f)(a), was proposed four times, and had a public hearing over a period of three years. And that really shows not just the sensitivity, but the -- as Ed was saying, if you didn't get it right, you came back and adjusted to do so.

MS. QUINN: It wasn't so much sensitivity or being wise. There was a storm. The Commission was

practically dismantled by the private sector because the Commission got out ahead of the private sector in thinking forward.

And it goes back to Dick Phillips, I was a little rule writer in those days. I wasn't thinking big thoughts.

But what astounded me was here the Commission put this rule out, and I think the drama of that, Ed and John have not quite captured probably because they were so involved in it. Is that the rule proposal went out, there's kind of dead silence. You're getting lots of lawyerly points on this rule.

And then about a couple days before the Commission is going to have a meeting on the rule, Goldman Sachs, I think John Whitehead, and a number of --

MR. GREENE: It was Bernard, from Morgan Stanley.

MS. QUINN: Right. A number of the major houses came in and said to the Chairman and the Commission, you guys have lost your mind. What do you think you're doing.

And so this all sounds like an academic exercise where we're all going along and doing all this integration stuff. There was a war, and this war was a pitched war,

and it took three years to get the Shelf Rule in, and took longer than the integrated disclosure because the Street was totally opposed to it.

MR. HUBER: The Street, not being the underwriters, but the issuers were very supportive because we calculated by using some data that the savings were basically in the hundreds of millions, if not more.

MS. QUINN: Right. But they --

MR. HUBER: Let me get into that, because I'm going to get into the war. I want to --

MR. PHILLIPS: -- say these came from the pockets of the underwriters.

MR. HUBER: Yes. Actually, with all due respect, at the very end of the game, what they were fearing didn't happen.

And the fact of the matter is I want to get into this because the Shelf Rule, and we're there now, the Shelf Rule is the paradigm of integration.

For an S-3 company -- keep in mind S-3 at that time was a $150,000,000 threshold. Okay. It -- I mean the S-3 $150,000,000 threshold was set by means of an economic study from the Office of Chief Economist to the Division

that basically said at that level you have an analyst following of sufficient proportion, at least eight analysts was the standard. That you could in essence make the judgment that the efficient market theory, which was the predicate for all this, worked.

But for an S-3 company that could use incorporation by reference, and incorporation by reference is the grease that makes integration go. It's literally the thing that makes the machine move in all of its different places, from informal, to formal, the Gossien Report, to the 10-K; from the registration statement, from the 10-K into the '33 Act registration statement, incorporation by reference makes the whole thing work.

For that type of a company to use incorporation by reference, from Exchange Act filings in terms of past and future, 415 turbo charged offerings. It turbo charged them to such an extent that companies fell in love over might because they could hit market windows.

And one of the most important things about this era, just remember, I mean the late 1970s, I think the prime rate was 19%. Okay. We had interest rate changes every week. And companies would lose tremendous amounts of

money.

You talk about offering costs. The cost of missing a market window at that time was, you miss it, and you've gone for that quarter, or that year. So companies loved the concept of the Shelf Rule.

The problem was that the investment banking houses did not like it. And I would submit to you -- and this goes back to the "war" that Lee was talking about.

The reason was a fear of competition for business from issuers. Now that's not what was said, but I think that that was one of the underlying themes. I will show this by a example.

The hearings were being conducted. They were being conducted in a hearing room in 1983, here. Actually, in the old building. And John Gutefreund was testifying. John Gutefreund from Salomon Brothers. And I was Deputy Director.

And I ran operations at that time, and at the time the Division had what was known as a 48 hour rule. In other words, the 48 hour rule basically posited that even if you got a no review, you could not go effective in less than 48 hours from the time of filing.

And what happened was that an assistant director, who is the person charged with declaring something effective, came in and said we have an offering. And I was listening to Mr. Gutefreund testifying, and he was testifying to the effect that if you adopt the Shelf Rule grass will grow on Wall Street, that all of these terrible things are going to happen, that they can't do due diligence, blah, blah, blah.

And I looked at the assistant director, and I asked her who's the underwriter. She said Salomon Brothers. And I said why don't you call Salomon Brothers back and ask them if they agree with what Mr. Gutefreund is saying about the Shelf Registration Rule, because I don't know whether they should be declared effective in less than 48 hours.

The basic point of this entire story is that while a large number of senior people at these houses were concerned about Shelf Registration, deals were actually happening at a faster and faster clip. And the people that were actually doing deals -- this was a very important point because literally the investment bankers that were doing the transactions knew the value of Shelf

Registration. And that was a very important point with respect to this.

MS. QUINN: But it is fair to say that what they were worried about, they were worried about two sets of things. The large firms were worried about competition and compressing of underwriting costs, which in fact happened.

And so it was great economics to the issuer, not so hot economics to the investment banking community. And the regional investment banking firms were very concerned about being displaced in a fast track system, which also occurred.

So I mean you have the banks not having a realistic assessments of what was going to be the impact, but it really was a matter of economics. Right?

MR. HUBER: It was a matter of economics, I think there was also some sincere feeling -- I mean John Gutefreund was sincere, because he had grown up in an environment of the Depression and he actually believed in these things.

The fact of the matter is that I would submit to you it was -- there was a conflict among and between the

Commissioners at the time too. I mean what was being reflected outside was being imported into the Commission itself.

And I got my job a Division Director in August, of 1983. Lee Spencer looked at me and he said, easy job. You know, the Shelf Rule has been proposed, it's a temporary rule, it's going to expire in December. All you've got to do is get it adopted. And if you know Lee Spencer, he would chuckle, and he said not a problem.

For the next several months my job was to do the "not a problem." And if you look at the adopting release, you will see a dissent, a partial dissent, from Commissioner Thomas, concurring in part, dissenting in part. And her concern is exactly what Linda was talking about with respect to the effect of this on the market place.

The fellow that was the chairman, John S.R. Shad, right in the middle of the temporary rule period, gave a speech about how the Shelf Rule was all very well and good during boon times, but woe be when you had a bear market.

And in the final release is a statement concurring opinion of Chairman Shad. I just want to read

one sentence. "The test of the Shelf Rule will come during the next bear market." I mean that's a real downer.

(Laugher.)

MR. HUBER: The fact of the matter is, getting these folks to vote three to one on this rule was a lot like putting a deal together.

The fact is, however, that they did. And I think it is a tremendous compliment to the Commission that this release did come out with a final rule.

It was pared back, and it's a very important point in terms of how this salami was cut. As a temporary rule, the Shelf Rule applied to anybody, S-1, S-2, S-3 companies. The concern on the part of a lot of people when they started talking about it was whether it was too broad.

And keep in mind that there were two types of shelfs. There was the traditional kind of shelf, the S-8 kind of shelf, and the "nontraditional" kind of shelf. And the nontraditional kind of shelf, upon adoption, was limited to the S-3 across the board.

The mantra of the Division of Corporation Finance that fall was the S-3 cut. And the fact of the matter was

that S-3 cut was something that literally could not be assaulted because of all of the big companies that were all for this. The fact that everything was going to in essence work very well for them.

But, and this is the big but. It was working beautifully for debt, it wasn't necessarily working very well for equity. And the classic example of that was Eastman Kodak, which was one of the first companies to use the Shelf Registration Rule for an equity offering, and Goldman Sachs botched the offering, the first traunch, couldn't sell it because of a thing that became known as overhang. And Goldman Sachs became an investor.

And all of sudden people just didn't like shelf registration for equity securities. So the fact of the matter is this was a battle. There was a lot of back and forth.

My point with respect to pointing out that the Commission put the shelf registration regulation proposal out four times and held hearings, was that the Commission kept coming on with an idea that was very forward looking. And it's a compliment to the Commission and its Staff that it did so.

My only point though is I want to read the bottom line of this release, because there is in the executive summary, which Mr. Shad was responsible for putting into all releases, there is a sentence. Think about this in terms of the year 2002.

It goes through the cost savings, and that's a very important point. This was investor protection and saving costs at the same time. That was what the Shelf Rule did.

"At the same time, however, concerns have been raised, including institutionalization of the securities markets, impact on retail distribution, increased concentration of the securities industry, effects on the secondary markets, adequacy of disclosure, and due diligence."

I would submit to you we're still there.

(Laughter.)

MR. BELLER: John, I want to just make one point -- the competitive landscape against which this was done, not only has the point that Linda alluded to, but the point you alluded to earlier, which is -- and I was not in the building then. I have never been in the building, except

as a consumer until 10 weeks ago.

I was sitting over in France watching the Euro markets eat the U.S. debt markets lunch with the invention of something called the "bought deal." Which was in effect an overnight takedown off of a nonexistent shelf. And very, very significant numbers of U.S. issuers moved their deals to Europe.

There was some interest rate arbitrage, but there was also this I can get my money in Europe between Tuesday and Wednesday, whereas I can't get my money between Tuesday and Thursday or Friday, even whereas I can't get my money in the United States for minimum of 48 hours, and maybe not for weeks.

And you're absolutely right -- the Goldman Sachs and the Morgan Stanleys and the Salomon Brothers of the world were on the one hand very nervous about what was going to happen in this market, but they were also very nervous that they were seeing this market, at least on the investment grade debt side, disappearing over the Atlantic.

And so that made for some very interesting competitive issues.

Complicating that -- I don't want too far afield, but there was some macro economic things happening. Shelf went final in 1983?

MR. HUBER: December. In fact, November.

MR. BELLER: Withholding taxes on debt for U.S. issuers was repealed in 1984. And with a stroke of the pen the U.S. Treasury, or the U.S. Congress, made debt offerings overseas much more attractive to U.S. issuers as a tax matter, than they were a year ago.

I really think that if Shelf hadn't been put in place in 1983, or before withholding tax repeal, the U.S. debt markets would have done what in fact the Japanese debt markets did, and this is not hypothetical.

I mean Japan's domestic debt market is in London. It's been in London for the last 20 years, it will be in London for the next 20 years I think. And the reason is a regulatory arbitrage between the Euro market and the domestic market in Japan. And we really faced the same risk in the late '70s and early '80s in this country.

MR. HUBER: The issues that get debated though are the issues that never in fact have -- the biggest issue was at the market equity offerings. Those people were --

they never happened.

MR. BELLER: They are now.

MR. HUBER: Actually, now -- I meant before, the real concern was that, and that attracted the most when, as John said, after fighting this battle it turned into a -- you changed it to universal shelf. Equity offerings simply disappear for Shelf going forward.

It was the debt market, but that didn't lead to as much of a debate as what this would do. And, again, the hardest thing is people know that there is going to be change, have a hard time anticipating it.

You have the Commission having to make some hard calls without being able to see ahead, and they did make some hard calls. But the various things that most people were worried about didn't really happen.

And I would submit to you that in terms of the rapidity with which the Shelf Rule worked, the fact that the investment banking firms were worried about an adverse competitive effective never materialized because -- I mean one of the jokes about Rule 415 at the time was that it was numbered 415 because that's when you were called by the company, at 4:15, we're going to do a deal tomorrow, okay,

it's at 4:15 p.m.

The fact of the matter is, what actually happened was that the company would go back to the investment banking firm it had used before. And there wasn't this competitive kind of chaos that the investment banking firms were worried about.

Two additional points that I want to make. The first is the American Council of Life Insurance letter was signed by Lee B. Spencer, Jr., in 1983. A lot of people attribute that to the second time, or maybe -- yes, the second time that presumptive underwriter was laid to rest.

MR. PHILLIPS: You've got to explain that.

MR. HUBER: Yes, I will. I will. Presumptive underwriter was the idea that if anybody bought more than 10% of an offering, that you were deemed to be an underwriter within the meaning of Section 2(11) of the '33 Act. Okay.

And Mr. Levenson, in the 1970s, laid that concept to rest. It came up again when the Shelf Rule was in its trial period, and the American Council of Life Insurance came in because when we're talking about taking tranches off the Shelf, an institution may be the only buyer of that

traunch.

In other words, GMAC, which was one of the biggest sellers of debt at that time. Could literally take a traunch off the shelf and sell it to Fidelity, and Fidelity would have a hundred percent of that traunch. So the question was what's the status of that.

A lot of people look at American Council of Life Insurance as the second time that the Division laid presumptive underwriter to bed. That's one way of looking at it.

I would submit to you it was one of the most important things with respect to getting institutions to buy into the Shelf Rule as an idea that actually could be done from the buy side.

The sell side, the issuers loved it, and the institutions were concerned about liability, and the American Council of Life Insurance resolved that.

The last point about the Shelf Rule. The most forward looking part of Shelf registration is Rule 415(a(4). It was designed to enhance the ability of an issuer to feed stock directly into a trading market. Since the middle 1960s, a selling security holder could sell

stock directly into a trading market. 415(a)(4) would allow the issuer to do the exact same thing.

I would submit, since I love that part of the rule, that you're going to see more and more of that as the twenty-first century gets rolling.

Now, I want to step back because the other paradigm example of integrated disclosure -- and you've got to keep in mind. With respect to all of the things that you have seen so far, the building blocks of this entire thing were put into place, and the Staff did '34 Act reports first because that was the first thing that had to be done.

Forms A, B, C became 1, 2, 3. The efficient market theory was bought. The idea of liability. Reg C, blending with Regulation 12(b). Those were all the building blocks.

I, in the early 1980s, had a wonderful capability of having those building blocks be put into place and see the entire structure of integration work. And the paradigm example from the stand point of business combinations was S-4, because you literally were putting together the buyer and the seller from the stand point of S-1, 2, 3.

You could have the situation where the buyer is an S-3 company, and everything was incorporated by reference, and the seller was a nonpublic company, okay, and you would have full disclosure on the part of the seller.

That's the way integration was intended to work, and S-4 did that sort of a thing. And if you look at it from the stand point of that function working, it was one of the best examples of a dream that really came to fruition in the middle 1980s.

MR. PHILLIPS: Thank you, John. Now I think I'm to move on to --

MR. ROWE: I have a real question though, and that is since Ed and John took care of the whole problem, what was left for Linda to do?

(Laughter.)

MR. ROWE: Linda, what did you do for ten years?

MS. QUINN: Well, we all just kicked back and had a good time.

MR. ROWE: There were no wars during your tenure?

MS. QUINN: Actually, I've been asked to talk in part about Rule 144A. But I think we should say it sounds

like all we were doing during the 1980s was integrating the '33 and the '34 Act, and introducing this new financing technique.

We shouldn't overlook the fact that what the corporate finance group was also doing, and actually the whole Commission, was really dealing with the entire revolution in the takeover area.

And in understanding lots about what was going on you also have to know that you had a market that was developing not only markets for control that were huge political issues, huge economic issues, serious debates about what disclosure should be, what government should be, what the role of the Commission was in this market for corporate control, which had disclosure implications.

But, also, what grew up along side of that -- hard to believe that it wasn't a big market forever, was the high yield market. And in those days called the junk bond market.

But in the early '80s this really was a new development. And during the time that John was Director and coming into my time period, you had the development of private placements for high yield debt, which were

immediately -- or closely followed by resale registration. And it was the common way of doing high yield debt transactions.

So you had the investment grade market was in the splendid system, and you had the high yield debt market, which became enormous, and became a very large percentage of the value of the debt market because it was financing the take overs being done on this series of private placements followed by resale shelf with a step up in interest rates, and all sorts of bad things if you didn't get it registered.

So you had this concept of the private market being used to essentially place, have initial placements of what was going to be freely resalable securities.

So this is all going on in this process, and there was also great attention during the mid to late '80s in the -- how good was the disclosure that was being provided in these '34 Act and '33 Act documents.

And the focus of attention was on MD&A, which was recognized through the '80s, increasingly recognized to be the keystone of what the integrated disclosure system had accomplished in terms of improving the quality of

disclosure.

Yes, the periodic reports were very important, and sort of set the foundation for integrated disclosure by having the 10Q. But the concept of MD&A was really what really was viewed as improving.

And there was great concerns that the MD&A disclosure really wasn't doing everything that was intended to be accomplished when it was put in in the early '80s.

And so the Commission went through a process -- the auditors -- this may sound familiar. The auditors said how about having us get involved in the MD&A, and there was a lot of question about what to do.

And the Commission ended up, after putting out a concept release on MD&A, but in 1989 put out a interpretive release, which I think probably had as big an impact on MD&A as the initial requirements did. I think it made the MD&A disclosure true to what the initial intent was.

And the Commission actually went out and reviewed lots of MD&As, and then took sections -- hard to believe we did this. I think we must have lost our mind. We took good ones, crossed out the names, and said this looks good to us. And we took bad ones, and crossed out the names,

and said this is really bad disclosure.

And there was a very long -- and I think -- effective interpretive release that gave guidance as to really what was expected. And it created a process that was used again in the times of management executive comp changes in the '90s of going and looking -- because I think -- I don't know whether this is fair, Ed, but I have the sense that when MD&A got adopted the Commission had an idea. The Staff had an idea, which we didn't really know what it would look like. It was sort of put it out there and see what developed.

And I think frequently in the disclosure area, when the Commission comes up with great new ideas, you really don't know what it's going to look like. And I would suggest on executive comp we had no idea what executive comp reports were going to look like until the first set of executive comp reports. And we said don't like that, and went through a whole lot of process.

I would dare say that critical accounting policies is another area that throw it up, see what happens, and then we'll tell you whether we're -- you know, whether we're happy, or sad, if you're the Commission.

MR. HUBER: Linda, in terms of MD&A, at the time that it was adopted, the idea had come from Sandy Burton, who was then Chief Accountant to the Commission. And Sandy always looked at it, how does a business look through the eyes of management. That was his phrase, and he didn't want mechanistic type of disclosure, like, you know, 2% or 5% of those, or 10%.

On the other hand, his proposal, when we put it out, wasn't warmly embraced. And there was a lot of resistance, but the Commission adopted it in any event. And it became very important.

So he envisioned what he wanted, it just took a long time, and your rely on interpretations to start moving in that direction.

MS. QUINN: Well, I think there had to be experience and people had to write and try it out. I just posit this as in this time period I think there came to be a method of coming up with new disclosure ideas without necessarily knowing how to tell people what to do.

But a process by put it out, set out some general principles. Because what's important in the MD&A is that it is general principles of disclosure that you have to tailor

to your specific company.

And it's very hard to tell somebody how to apply general principles unless you can use examples of what works, and doesn't work, and to give people ideas of how far you want them to go.

This is all just to talk about what was going on in the integrated disclosure system while we did some other rule making, which started -- I became Division Director in April of '86. And there were several issues in front of the Division that really needed resolution.

In part, because everyday institutional investors like TIAA-CREF, or other pension funds, or the mutual funds would show up, literally show up on our door, and say we really hate the fact that because of your taking care of us, and saying transactions have to be registered, we are being cut out of foreign rights offerings. We are being cut out of foreign exchange offers. We are being cut out of foreign tender offers because you were seeing the beginning of real internationalization of portfolios.

And, meanwhile, every time there -- and rights offerings were the quite typical way of doing equity offerings outside the United States, and these folks -- we

wouldn't let you in on a rights offering unless it was registered. And so the obvious answer for the foreign issuer was just cut out the U.S. holders and it was done on a wholesale basis.

So we had institutional holders saying you are also, by your great regulation and protection of us, keeping us out of off shore offerings. So that my only way to get into a foreign issuer's security is in the secondary market, but the good pricing is in the primary offering.

So you're taking great care of us by saying you can't buy in the primary offering, but you wait 40 days, then you can buy the same security, in the same market, in the secondary market, probably for a higher price.

MR. BELLER: Well, indeed, in the rights offering context in particular it was essentially guaranteed to be a higher price because the rights were almost always offered at a discount.

MS. QUINN: Right.

MR. BELLER: So the loss was built into the deal.

MS. QUINN: It was a situation where the institutional investor community was quite concerned that

the protections that the SEC was assuring they had were working to their substantial economic detriment, and they were very vocal about it.

There was also remaining -- Alan had put in Rule 144, and we had resale guidance. But then there was the question when can you privately resell a privately placed security. And the Bar had developed 4 (_), but, again, it's the same issue that Alan raised back when 144 was coming up. Is the uncertainty impose a very substantial cost in the efficiency of the private market. And there was a lot of call for the SEC to give greater guidance, or to codify in some fashion 4 (_).

So private resales was an issue that had to be addressed.

MR. ROWE: Yes. If we could back up just for a moment, something that we overlooked that took place earlier in the private placement area, certainty was provided by Regulation D, but that's an issuer exemption, and it's not a secondary transaction exemption.

We shouldn't forget that that's also relies on integration and disclosure because the kind of information that you provide depends upon whether you're a reporting

company, or not a reporting company.

MS. QUINN: Just going off from Dick's point, the third issue that we had was because 4(2) didn't cover a dealer, or an underwriter, but only covered the issuer, it limited how you could transact in the private placement market. It meant that you, the investment banking firm, were always taking as an agent because you didn't really have an exemption.

And there was a thought that the private market could be a lot more efficient if you could underwrite on a private placement. That was the third issue we were looking at.

Then the fourth issue we were looking at was, as Ed's talked about, and Alan, in the early '80s you were worried about the development of the Euro bond market. Well, in the late '80s, we were really worried about the Euro equity market. All of a sudden equities, there were real equity placements, reflecting in large part the privatization that were going on in Europe.

And there were questions of how did you do off shore offerings in the Euro equity market, even for European issuers, without raising '33 Act concerns.

Now, these issuers didn't think they had '33 Act concerns because they're thinking what the heck do I have to think about the Securities Act of 1933. I'm a French issuer, and I'm in France, and I'm issuing to people who are resident in France.

But we thought there were issues, and the counsel who were advising these companies recognized the issues. And we, the Staff, were being asked increasingly to give guidance through the no-action letter process applying the interpretive Release 4708, which had been issued in the 1960s.

Release 4708 was really geared to the debt markets, and the procedures that had been developed under that interpretive release had really been developed by the private sector in combination with the SEC Staff.

The private sector would propose conditions and say if we do this, will you agree that this is an off shore transaction to which the '33 Act shouldn't apply. And the Staff would give no-action letters, always caveating they would not tell you when the securities could come back into the U.S.

So the off shore transaction would be no- action,

but any resales into the U.S., you were on your own.

So we had those issues, and then, finally, we had the fifth issue, which was that was increasing pressure on the Commission to allow foreign issuers to access the U.S. capital markets. And the Commission had said you can only come into the U.S. capital markets if you comply with the accounting and the disclosure requirements, and comply with the registration process.

And foreign issuers wanted access to the U.S. market, and were not necessarily prepared to go through the registration process.

Those were the issues of the day, and we thought, hey, we have an idea. How about if we look at and use the private market to resolve the competition with the Euro equity market to alleviate some of the pressure that the institutional market was putting on the SEC because who are we going to let buy in these private transactions but the institutions.

And it also dealt with the resale issue, and the codification of 4 (_). Not completely, but we thought would take the pressure off.

And so for all of those reasons, the Commission

developed the concept of Rule 144A. Rule 144A simply put allowed issuers to sell to dealers, and investment banking firms as principals - something that they couldn't do easily legally before.

It was a way to say to foreign issuers you can come in and have access to the entire institutional market place, and so stop yelling at us that you want us to waive the registration rules if you want to access the public market.

And we said to the foreign issuer community the SEC is giving the equivalent of the Euro market in the U.S. on both the equity and the debt side.

Now, we were also trying to deal with the issue of when -- what we should do about Release 4708, this interpretive guidance that said off shore transactions shouldn't be subject to the '33 Act, but if you were a U.S. citizen you carried the right of '33 Act protection with you all of your life. And so even if you had lived in France for the last 40 years, because you were a U.S. citizen, you have the '33 Act protection. And we knew we had to change that because it didn't work anymore.

I'm not going to talk about Regulation S a whole

lot, other than to say we were working on it on a parallel basis with Rule 144A.

And in the midst of working on these two, side by side, we recognized -- and I think the private sector recognized, that, holy smokes, if you combined the resale provisions of Reg S, which allowed securities to be resold freely off shore in the off shore trading market, and you allowed the primary issuance in on a private basis to the institutional market, a foreign securities, the foreign issuer could do a Rule 144(a) placement into the U.S. market with no private placement discount because the liquidity of the foreign market could be easily tapped.

And it was as though there was going to be an offering as though the U.S. institution bought in the foreign market and participated in the foreign market. That is what the Reg S and 144A really principally did in 1990.

And I will say that I think that if you read the rules you will see the Commission anticipated all of these developments. But I would say the success of the initiative is probably -- I think far beyond the expectation.

Two things to point out about this. This was not a widely welcomed proposal. The same players who were concerned about Shelf raised issues about 144A coming into being. Thinking -- and it's important to recognize that the investment banking firms thought that because it was happening in the private placement market that the commercial banks could be real players in this market because they could play in the private placement market and underwrite in the private placement market where they couldn't in the public market.

The stock exchange thought it was a really terrible idea because we were going to fragment the trading market for equities. So if you wonder why fungible securities were excluded from 144A, it was to make the stock exchange less worried about fragmentation.

And I don't think it was a great loss to the 144A market that traded securities were excluded.

The institutions, the traditional private placement buyers, hated it because here they were losing this discount that they were being paid for. They said, well, we don't really care about the liquidity. We never sell this stuff. But we love getting this liquidity

discount.

Interestingly, the Hill didn't say anything until the day the rule was adopted. And then they expressed a number of worries and asked for reports on 144A for the next four years.

(Laughter.)

MS. QUINN: I think with that, the only other point I'd make is -- because it's on the outline. Is the Exxon Capital exchange, which also fueled the attractiveness of the 144A market for U.S. securities, debt securities.

It replaced essentially what I referred to before with the private equity then being registered for resale. That was what happened in the mid '80s. The Exxon Capital for high yield simply replaced that process.

I'd like to tell you that this was a great, brilliant thought. We sort of backed into this process. We had given a letter to one player on I think it was remarketed securities, and Mickey Beach said, holy smokes, look at what you're doing. And we had a huge meeting of the whole management staff of the Division to say are we going to go this direction, or not.

So we gave the first letter, and I think we could have turned back, and we said, no, we think this works well for the market, and we went forward. But I don't think it was part of the 144A structure.

Thank you.

MR. ROWE: One of the torpedoes that helped sink the Aircraft Carrier was that the Commission was seriously considering doing away with Exxon Capital -- but I think we have to move on. We have a gap because Brian Lane left. So we're jumping the gap to David Martin.

MR. MARTIN: Thank you. Well, let me go back to where Brian was, just to pick up where I will begin. The Aircraft Carrier comes along, and many of the themes that we've discussed earlier this afternoon really resonate in the Aircraft Carrier.

If you put too much on the table, that's a problem. If you get a political piece over it, that doesn't hold together through a long war of attrition with the outside or the inside, you're going to have difficulties.

That doesn't necessarily invalidate everything that was in the Aircraft Carrier, and many of the ideas in

the Aircraft Carrier are now very much on Alan's desk, and were on mine.

But the atmosphere created by the Aircraft Carrier torpedoing definitely effected the first part of my tenure. We were really in a period where I think people had gone to their corners and were sort of licking their wounds. The language and the tone and the tenor of the debate had gotten quite stiff, and this was one the Commission lost, I think fairly. From the outside you'd say that at least.

And, also, there were many other things going on. Linda averted to the market for change of control going on during the '80s when we were doing the integration projects.

At the same time, left unsaid so far, is the development of EdGAR, and EDGAR has a tremendous lubricating force in the integration project. And by the '90s, EDGAR was taking a lot of staff resources, and there were modernization going on.

We had a very hot market going on. We had plain English. So there were lots of other activities that took the staff's attention away from the Aircraft Carrier ideas.

The hot market was draining the staff off, lack of experience, and turnover at the staff level meant a heavy and hard intellectual project such as the Aircraft Carrier represented also was a reason we didn't get back to it for a while.

Nonetheless, there was a sort of rebirth in two different ways, and I'd like to just touch on them quickly. The outsider wouldn't let this go, and we got lots of suggestions and some helpful ways to sort of rebridge the gap that was developing post Aircraft Carrier. As well as Regulation FD.

On the former, the ABA committees, and the SIA, and the Bond Market Association began to come back to the table. The Commission announced, and the staff said, that we would not revive the Aircraft Carrier totally, but we would start picking up in bits and pieces. And I think the most of the ideas that seemed to emanate during this period were capital formation and communications.

Ironically, there were other things in the Aircraft Carrier that are now more important than those two areas, but that's where most people's attention was placed.

And the ABA Committee and others came up really with four or five ideas that are still out there, which would be to work with the concept of a market for the larger issuers. And create basically a system whereby at a certain size you would get a mandatory universal shelf. That sort of concept no review, incorporate all '34 Act reports. Really pure integration, if you will.

You wouldn't have to deliver anything, and you would just have to retain all of the free writing that you would have.

So the company registration idea of the mid-1990s really came back in the form of this ABA mandatory universal shelf.

At the same time, there was a movement afoot to go back to the communications rules and allow free writing really for everybody, save first time issuers. And this really played off of what the Commission was learning, the world was learning about information technology and speed in getting to market. And saying it's really antiquated to regulate offers. You really ought to just let every communication outside the registration statement be unregulated, retain it, yes, we'll argue about what the

liability should be, and that still has not been resolved; but free up communications.

Also, there would be a black out period for first timers, but otherwise even an IPO you'd have pretty free steaming in terms of communications outside the registration statement.

Ideas to expand Rule 134, that you're not a prospectus, and therefore you have no complications as an offer legend type of rule. Everything from adding ordinary business communications to it, to commercially efficient communications, two other ideas that have come in to expand Rule 134. And, finally, to expand exemptions for research reports. Those ideas are all on the table. The staff has been looking at them, and outsiders have been making very good recommendations here.

Also, to expand the exemptions in the area of Regulation D, to get rid of general solicitation. To make Regulation D available to nonissuers. To expand 144(a) by narrowing, or expanding the class of QUIBS, and also to permit it to be used by issuers.

And the changes to Rule 144 averted to earlier, but perhaps to clarify what is, or is not an affiliate. So

that there is more concrete, less uncertain test for affiliate status under 144.

And the final idea that is still out there, that has come up in the post-Aircraft Carrier debates, has been the notion of how you deliver information. Everything from the practical notion of uncoupling the confirmation with the final prospectus to be able to get to T+1, to what Ed, or somebody mentioned earlier, access equaling delivery.

The ABA's letter talks about constructive communication. There are a lots of other ideas out there, but I would say that the Commission is in a much better position to understand and appreciate those sort of proposals because of EDGAR, because of the advance in electronic communication, and this is clearly something which will play into the some of the ideas that Alan is going to get into in a minute, I'm sure.

Undiscussed in some of the post-Aircraft Carrier debate really has been currency of information. The Commission has had proposed to it notions that we should reduce the gap between earnings releases and when a 10-Q is filed, and a suggestion that that could speed up the 10-Q. And the Commission had previously talked about getting

Forms 3, 4, and 5 for Section 16 reporting sped up. Need to have a statutory change, but we could at least put it on EDGAR, the Commission could put it on EDGAR, which would speed it up.

But other than those two issues, prior to Alan coming in, there had not been a lot of discussion about the currency of information.

MR. PHILLIPS: Well, wasn't currency dealt with in part by Regulation FD?

MR. MARTIN: I'm going to get to that in one second. Yes, I agree, other than FD, big footnote.

Ditto, forward looking information, not really put forward. But, remember, those are two issues that really go with the '34 Act regime, and not so much with capital formation. And the emphasis after Enron -- I'm sorry, after the Aircraft Carrier --

(Laughter.)

MR. MARTIN: Enron is another form of Aircraft Carrier. After that, emphasis really was on the '33 Act and the capital formation.

And very little said about substantive changes in disclosure. The S-K content, a little bit, we had been

through the plain English wars, but in terms of the S-K content, not much said.

So, let me use two or three minutes on FD because in a time where people coming back together on some ideas that had been in the Aircraft Carrier, and certainly been in the disclosure simplification task force, and the Advisory Committee, good ideas for capital formation reformation to get people to market faster and deregulate offers.

At the time that we were beginning to come and discuss that again, at the same multi-tasking, beautiful way the Commission does things, FD was being adopted. And everybody knows what FD is now, and I won't get into that, but FD has, notwithstanding the wars, sort of gone down okay. I would posit because issuers have said we can do it, it's not that hard.

MR. ROWE: David, the Martians that are going to look at this tape or listen to it ten years from now may not know what FD is. So if you could explain it in just one sentence.

MR. MARTIN: One sentence. FD is the Commission's rule that says if you make disclosure, if the

issuer makes disclosure of material information to a particular form of covered person, they must at the same time make it the same information available to the public.

Close enough?

MR. ROWE: That's close enough.

MR. MARTIN: Now, FD is a '34 Act regulatory concept. It wasn't put in to facilitate capital formation. It was put in to deal with selective disclosure. Bitter pill to swallow, probably has been swallowed, one, because the information -- the market loves information and issuers can do it, and technology allows it.

But think about the issues that were debated during Regulation FD. That if you were to have a Reg D battle redo here, the issues that would be raised, and think about current disclosure, which is highest on Alan's list, I'm sure, among others. How you deal with an environment where you must make snap judgments about what is, or is not material.

How do you disseminate current information, FD information. FD says under means reasonably designed to lead to broad nonexclusionary dissemination. Same sorts of issues you'll have to consider under current disclosure,

unless you say file, and that will create other issues that people will need to think about.

Volatility issues, institutional investors are not so sure that they even liked quarterly reports certain times. Will institutional investors find that there will be volatility created by current disclosure, but that's an issue that was hotly debated under FD. We probably have a lot of intelligence to judge whether FD has created volatility.

Quantity versus quality issues. Lots of people raised that with FD. It seems that that will be the same issue with current disclosure. And the cost of compliance.

Those are the five issues that were debated tremendously under FD. FD was adopted, they've swallowed the pill. It seems to me it telegraphs the punch that the Commission now has to deal with when it comes to current disclosure.

I mentioned EDGAR. I think EDGAR is a huge undercurrent in terms of integration, and I will also mention the Commission's own web site, which I think has made the Commission much more comfortable with the notion

that web sites can equal good dissemination.

And so the idea that companies would have to put a '34 Act report on their web site is now something that the Commission thinks is a good idea, but I think the Commission has gotten comfortable with its own web site which has helped it get the point.

MR. PHILLIPS: You know, you compare dissemination capability. Now and in 1960, when the Wheat Report thought that microfiche would be a grand break through in dissemination because until microfiche you could only get copies of reports by going down to a Commission reference room, or to an exchange in which the security was listed.

MR. ROWE: And you couldn't find it at the exchange.

MR. PHILLIPS: And you couldn't find it at the exchange. We've come a hell of a long way.

MR. MARTIN: Right. Let me leave the rest of my time to Alan.

MR. BELLER: Okay. Thank you. I guess let me start by incorporating by reference all David's remarks regarding Securities Act reform, access versus delivery as

things that passed from his plate, to mine. They are still there.

There have been some questions whether we still intend to look at securities act reform, which I think of in two large buckets. One is reform of the communications process, and the other is somewhere between improved and instant access for large seasoned issuers and the stuff that goes along with that; and the answer is they very much are still on the agenda. They have been pushed a little bit back by some of the events of the last three months.

If you had in November what would be the order in which we would be looking to do things, I would have said we would probably get some kind of a securities act reform proposal out, but that we were going to be -- have some disclosure reform proposals very much, very quickly behind those. That order has reversed. But don't despair, those of you that participated in the writing of the ABA letter, or support it.

In terms of integrated disclosure and what we're thinking about now, I think we have come a little bit full circle. Certainly to a couple of things Ed talked about that were happening in the early '80s, and that Linda

talked about that were happening in the late '80s, and the question I think runs as an undercurrent through this whole conversation.

Granted, we have integrated disclosure, but how good are the basic disclosure documents. And I really think that outside of the financial statements, that very substantially boils down to the same question that Ed was thinking about 20 years ago, and Linda was thinking about 13 years ago, which is how good is the MD&A.

There are other things that one has to fuss about, and worry about, and that can be improved, but the core -- I think the core question is how good is the MD&A. And I think ultimately an integrated disclosure system works well going forward if the financial statements and the MD&A together tell a true and fair and complete story of what's going on with the company. And one has more or less serious issues if that ceases to be the case.

So I think you can assume that in continuing to make the integrated disclosure system workable, a lot of our attention has already been, as you can tell from some of the things that have been published, and will continue to be, on MD&A.

You can cite to the December release on critical accounting policies. You can cite to the fact that in February we put out a press release, our advance notice of rule making. We are going to work to propose rules that follow up on that release and put more content into the critical accounting policies thought.

We have received some number of 10-Ks for 2001 already. I think in the next two weeks we'll get a whole bunch more from the calendar year filers, who could certainly have done them by the end of February if they had had to.

(Laughter.)

MR. ROWE: When you keep piling on.

MR. BELLER: Yes, yes. Noted. The quality of disclosure on critical accounting policies has varied. I suspect it's a lot like what was seen when people were first wrestling with MD&A as a whole.

We laid out some very general principles, and people have followed them in ways that we are happy, or less happy with. We're going to put more content around that in a rules proposal.

I think we're going to keep going on MD&A. I

guess a mantra I would leave you with is I think MD&A serves three related purposes. One is what has historically been the billboard, and continues to be. Tell us what is happening in the company, and within certain limits what is reasonably foreseeable or probable, as seen through the eyes of management.

Secondly, MD&A is intended to provide the context that makes the financial statements a more meaningful presentation of information.

In layman's terms, financial statements by their nature reduce to a number, or a bunch of numbers, but let's think about just one number, 37. Which is -- let's say that's earnings per share.

And you learn something about that, but the context in which to analyze that 37 relates directly to the critical accounting policies proposal. Accounting is not a science that gets down to a single number without a lot of judgement and a lot of estimation being involved.

And so that 37 is inevitably a number among a range of numbers. And investors would, I believe, react very differently if they thought that -- if they knew that the 37 was on a range of 37 to 41. Or 37 to 47, and they

would react very -- they would perhaps react differently if they knew that the range was 30 to 37, and they might react differently if they knew that the range was 34 to 40, and that the company used estimations and judgement and landed at 37.

We're not in any proposal I'm prepared to put on the table yet going to ask people to tell us about that range in those kinds of specific terms.

But I think the second purpose of MD&A is to provide that kind of context in a combination of qualitative and quantitative information so that investors have a better sense of what the financial statements mean.

The third piece of the mantra is investors ought to be able to find in a good MD&A the uncertainties around and the quality of, and the risks to, earnings and cash flow.

And if you think about those three things as the three things that investors ought to be able to find in an MD&A, 1980 was the beginning of a terrific idea, and what was done in 1989 was a terrific building on that, but I think we can go further.

We're not looking for more quantity, we're

looking for more quality. I think that in too many MD&As you could probably take a pretty large portion and put it in the waste basket and you wouldn't lose a lot of value. There is too much elevator music, and not enough really useful analysis.

But in terms of integrated disclosure and disclosure improvements look very carefully at what we do about MD&A.

Last point about MD&A, and then I'll move very quickly to a couple of other points. Trend information. The Chairman has talked a lot about trend information. To go back to the first bullet point in the mantra, what is it that management really is paying attention to in operating the business.

Sometimes that's not even financial information. Sometimes it's information that comes off of MIS systems. Sometimes it's information that is very much macro. What have the last six months or year of interest rates done in terms of earnings and quality of earnings, and what is management planning for in terms of interest rates going forward.

Some of this information is historical. Some of

this information can be forward looking. I thought that the dialog between Ed and Linda about, gee, you know, we put up some general principles about MD&A and we waited to see what happened, and some of it was good, and some of it wasn't so good. I wouldn't be amazed if that would be the result of what we're initially going to put out on trend information, if and when we get there.

We're going to try to put out some general thoughts. We're going to try to provide some guidance. Every company is going to look at this requirement differently and, therefore, the notion that there is going to be any ability to be very detailed and very prescriptive is I think a forlorn hope. And I know lawyers hate inexactitude.

I'm still a lawyer, and I haven't been away from my old life for so long that I forgot that inexactitude is a problem. But I think it's going to be general, and people will work their way towards sensible solutions.

Current disclosure, another thing that the Chairman has talked a lot about. I suppose the philosophical framework I would put around that for somebody who listens to this ten years from now and was

trying to figure out what in the world we were doing is as follows.

A very substantial amount of the disclosure provisions, including FD, I think very importantly, as they stand today are designed principally, first, to get information out on a periodic basis.

But, second, they're designed to prohibit unfair or illegitimate information advantage. And that is an absolutely laudable, sensible, necessary concept. You don't want one group of people who are trading in the securities of company A, to unfairly have better information, not because they're more clever, not because they've worked harder at figuring out what the information that's out there means. But unfairly have more information about company A than a second group.

And if that's all you were trying to accomplish, I would say that the current system is designed pretty well to do that.

Can there be more? Markets move much more quickly than quarterly. Markets can capture and evaluate information daily, or even more rapidly. What we're trying to accomplish is to give investors the best information

that we reasonably can within the constraints of liability concerns and with the constraints of not having to talk about ongoing mergers and other sorts of sensitive information.

The purpose is to give the investor the ability to make the best valuation and investment decisions possible about whether he or she should buy or sell company A, or company B. On that basis, the current system falls short because investors are per force under the current system, unless company A, or company B are really good at doing voluntarily what we think they ought to do, investors are working with incomplete information.

Investors are never going to work with absolutely complete information, but they can work with better information than companies are required to give them today. And I think -- I don't think we have to talk over the details of current disclosure. The February press release puts out a sort of a first cut at that.

If we get a trend information concept that goes into MD&A there will be presumably some update requirement to that trend information.

I'm very well cognizant of the duty to update

issues, and if we go that way we're going to try incredibly hard to build some protections so that issuers can responsibly update trend information without what I think of as excessive liability risk.

But I think it's important to understand the theory underlying our desire for a current disclosure system. That it's not just, gee, we think we ought to get more information out there for the sake of getting more information out there. There really is an important reason for it.

Final points, a couple of things that resonated through here this afternoon. You are certainly going to see this in the form of multiple releases. There are going to be -- I think the matters that were proposed in the February 13 press release, I think that in and of itself is three or four releases, and not one.

There is a fair amount which from the Division's point of view is ready to see the light of the rest of the Commission, and whether it's ready to see the light of day will depend on the Commissioners when they get to look at it. But they will get a look at it very soon.

Finally, review and resources. Ed's point. I'm

dying to read this 1980 Law Review article, and I'm going to pull it out because it sounds like we're there again. The only difference between where we are now and where you were is that Congress wasn't asking you why you weren't reviewing all 19,000 public companies.

The difficult time David had in making any decisions about reviews, other than to get them all done as fast as you could, had to do with the hot IPO market. It has been a prime directive of the staff that we'll do full reviews of every IPO. And if that market comes back, that's where we'll be.

But in the current environment we can't keep everybody busy looking at the few dozen IPO documents that have been filed. So we're going to look at some other things, and we are going to begin -- we are going to look more at 10Ks. We're going to look more at 20Fs. We're developing some new selective review criteria and targeted review criteria.

I would like to see us do more, not just pick intelligently which reviews to do, but also once we have decided to do a review do reviews in a spectrum of ways. Do some full reviews, do some financial statement reviews,

but also do some reviews that are limited to areas where we think the troubles are most likely to appear.

In order to do that we need -- and actually this ties into something that the Chairman said in his Senate Banking Committee testimony today. We need, and if we get some additional money and some additional resources, we are going to use some of it to acquire, I hope, some risk management capability. Because I think that the way for us to use our review process most effectively is to do a better job of assessing where the problems spots may arise and touching as many filings in those problem areas as we possibly can.

I think there is a multiplier effect in the review process. If we review two firms, because news gets around, that maybe affects four issuers. If we review four firms, that maybe gets around to eight issuers. If we review ten, that maybe gets around to 20. And so I think the multiplier effect in the review process is important.

We're not going to make public the selective review criteria any more than the Division has under my predecessors, but I think the criteria are going to change over time.

That's some of the things that I think are going on right now.

MR. PHILLIPS: They haven't done a book for you, have they?

MR. BELLER: Not yet.

MR. PHILLIPS: We left something for you. We thank you. We thank you all for a very engrossing discussion.

Dick, do you have any closing remarks?

MR. ROWE: No, I just want to add my thanks to Richard's thanks, and Alan Levenson will close out the program.

MR. LEVENSON: First, I want to thank the panelists for making the time and sharing their views with us. Secondly, I want to thank the attendees for good sitting power throughout the day.

I might say that our next Roundtable is scheduled for September, and it's going to deal with enforcement. We haven't completed our plans, but we have completed it to this extent that Irv Pollack and Stanley Sporkin will be co-moderators.

At this point we adjourn until the next session.

Thank you. (Applause.)

(Whereupon, at 5:10 p.m., the meeting was adjourned.)

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