

SEC HISTORICAL SOCIETY 10TH ANNUAL MEETING

June 4, 2009

JAMES W. BARRATT: Good afternoon and welcome to the 10th Annual Meeting of the Securities and Exchange Commission Historical Society. I am Jim Barratt, a Managing Director with Alvarez & Marsal and the President of the Society for 2009-2010. On behalf of my fellow members of the Society I would like to welcome all of you who are in the auditorium here at SEC at Washington DC, as well as all of you who are joining us online at www.sechistorical.org.

For the first time, we are video broadcasting this meeting live through our website. Before our panelists begin their discussion on the future of the SEC, I would like to take some time to discuss the Society and some of the work that we have been doing in preserving and sharing financial regulatory system history from the 1930s to the present through our unique, world-class virtual museum and archive.

First I would like to congratulate the US Securities and Exchange Commission on the 75th anniversary of its founding on June 6, 1934. Since November 2007, the Society has commemorated this anniversary through various educational and celebratory events throughout the United States. Today's Annual Meeting is the final educational event in the commemoration. In a few weeks our 75th anniversary dinner, to be held here in Washington, will culminate the commemoration.

While the SEC Historical Society is independent of and separate from the SEC and receives no government funding, we are honored by the SEC's confidence in us to appropriately commemorate this milestone anniversary. We have enjoying meeting many SEC staff and SEC alumni through the events this year. We appreciate the ongoing support that the SEC has extended to this Society since our founding almost ten years ago.

While this past year has seemed to focus on the celebration of the 75th anniversary of the SEC, our real work of preserving and sharing the history of the financial regulatory system in the 20th and 21st century has continued and has grown. As I mentioned, our unique virtual museum and archive at www.sechistorical.org, you are going to memorize that by the time I am done, celebrates its 7th anniversary this year. Today the museum's collections, including papers, photos, oral histories, educational programs, a timeline and galleries that bring together various material on specific topics, now total more than 3,200 primary materials, the majority of which cannot be found anywhere else online. The museum currently welcomes more than 9,000 visitors a month from federal, state and municipal government agencies, including the SEC; law, financial services and accounting firms; self regulatory organizations and academia. I am proud to say we are well on track to exceeding 100,000 visitors this year and the museum continues to be free and accessible worldwide at all times. The museum is more the history of one regulatory agency. It illuminates the actions, the impact and the people of the many institutions which have shaped the regulatory markets of the US and the world since 1930s, and we look ahead to reflecting further developments in the regulatory system.

Thanks to the oversight of the Museum Committee, and today's panel has a number of the academic members of the Museum Committee, the museum collections continue to be objective and authoritative. As I stated earlier the Society receives no government

funding. We are solely supported by the gifts and grants of the individuals and institutions which help us build the museum and make it available at all times free of charge. While the Society, like other non-profit organizations and other organizations in general, has been impacted by the current financial crisis, we are deeply grateful to all of you who continue to give and sustain this important work. We are also proud that we consistently commit over 70% of gift revenue each year directly to the growth and outreach of the virtual museum and archive. This annual meeting also gives the Society an opportunity to welcome new leaders and retiring leaders.

As I begin my tenure as President I would like to recognize my fellow officers. They are David Martin of Covington and Burling who is Chairman; Susan Coffey of the AICPA, President Elect; Stacy Chittick of FINRA and Donna Nagy, Indiana University Maurer School of Law - Bloomington, Vice Presidents respectively of Development and the Museum; Scott Bayless of Deloitte & Touche who is Treasurer; and Richard Nesson of The Depository Trust and Clearing Corporation as Secretary.

I would also like to welcome our new trustees: the Honorable Cynthia Glassman, a former SEC Commissioner and former Under-Secretary for Economic affairs, Economics and Statistics Administration, Department of Commerce; Angela Goelzer, Associate Vice President of FINRA; and Bob Kueppers, Deputy CEO, Deloitte & Touche, a returning Trustee. Finally I would like to acknowledge the service of those retiring trustees: Mark Berman of CompliGlobe, Herb Janick of Bingham McCutchen LLP, and Colleen Mahoney of Skadden, Arps, Slate, Meagher and Flom as they retire. Mark, Herb and Colleen are now among the 24 members of the Class of 2012 of our Board of Advisors which provides persons interested in the work of the Society with volunteer leadership opportunities without the governance and fiduciary responsibilities of the Board of Trustees. Our fellow trustees look forward to working with all the members of the Board of Advisors to advance the work of the Society in the coming years.

Today's Annual Meeting program looking at the future of the SEC has a timely topic but its genesis comes from comments from Joel Seligman, moderator of today's discussion, made nearly eight years ago when he served as a founding trustee of the Society. At that time Joel stated, "We are presuming that the SEC will go on forever as it is currently. That may not be the case. Let's not take the SEC for granted."

This afternoon to discuss the future of the SEC in light of possible changes in the financial regulatory system, please welcome from left to right: Robert Thompson, New York Alumni Chancellor's Professor of Law, Vanderbilt University Law School; Theresa Abandon, Lyle T. Alverson Professor of Law at The George Washington University Law School; Lyman Johnson, Robert O. Bentley Professor of Law, Washington & Lee School of Law; Joel Seligman, President of the University of Rochester; Donald Langevoort, the Thomas Aquinas Reynolds Professor of Law, Georgetown University Law School; and Donna Nagy, C. Ben Dutton Professor of Law, Indiana University Maurer School of Law - Bloomington. Joel, your comments eight years ago seem now as a prophecy. We know that you and your fellow panelists will give us excellent insights into one of the most significant regulation issues of today and I invite you to open the discussion.

JOEL SELIGMAN: Thank you. Never in the 75-year history of the SEC have we had such profound questions as those we face today. Should the SEC continue? Should there be a new approach to regulation? How do we address systemic risk? How do we address the complexities of new products, such as OTC derivatives and various forms of

swaps? How do we address new types of financial professionals such as those in the hedge fund industry? How do we address the fact that the securities industry is no longer an island unto itself in the United States but increasingly globalized? What do we do with the fact that financial professionals like broker-dealers and investment advisors, subject to separate systems of regulation administered by the SEC, are apparently indistinguishable to the retail public? How do we address concepts that we thought had been rejected as long ago as 1933, such as a revival of a call for merit regulation to a financial products commission? Does the SEC funding mechanism work? There are many, many questions that we could address, and we will only have the chance to focus on a few of them.

I would like to begin with a question that I am going to ask each of the panel. We are today celebrating the 75th anniversary of the SEC. I think it is probable but not certain, that at least some of us will be around to celebrate on June 6, 2034 the 100th anniversary of the SEC. Let me put the case as crisply as I can. Should there be an SEC 25 years from now? Is it an agency with great historical achievements in the past, or does it have a role in the future that's fundamental and enduring? Let me start alphabetically with Theresa.

THERESA GABALDON: Thank you. I feel very firmly that there will be an SEC and there should be an SEC in another 25 years. From that starting point I think about how could anyone conceive of handing over significant financial regulation to an agency that is not independent, that is not bipartisan. Those are two things that distinguish the SEC and I feel again most people would agree it should be continued. It certainly is true that the SEC has been required in the past to be very innovative in working with legislation that was adopted in 1933 and basically set into stone for at least a while some of the assumptions about the way the world worked in 1933. Its proven itself to be extremely innovative in dealing with some of those problems. Certainly it hasn't been able to resolve all of them as neatly as one might like, but we have seen a great deal of innovation. In addition I do think that the history of the SEC is otherwise generally an illustrious one. From the time I was a very young lawyer I remember hearing about the SEC being the "cops on the beat." It was the agency, probably the premier agency, it had a lot of luster. There may have been some bumps on the road now and again, but again I think it is an agency that commands a great deal of respect. In the short term I think that it would be devastating to investor confidence to dismantle the SEC and from a long term perspective it wouldn't make a lot of sense to me to throw out some things that basically do work because a few things along the line haven't worked quite so well. I probably will sound like a little bit of an SEC apologist here but as I was working on a supplement to a casebook recently I was thinking about what to tell the students in my securities regulation class about studying securities law and focusing on the SEC and what it does in this day and age and came away having written some thing that I think will try to communicate very firmly to my students that there is an SEC and very many of the things that the SEC has done and has done well will continue.

JOEL SELIGMAN: Thanks Theresa. Lyman, what's your view? Will there be an SEC in 2034 and maybe the more important aspect of the question, should there be one?

LYMAN JOHNSON: Joel, I think it is interesting simply to ask the question and perhaps we would ask it just because is the 75th anniversary. But I suspect we are asking the question because of dramatic developments that we have witnessed in the financial markets in recent times. Last fall when we saw grave financial peril in the financial

markets perhaps it was only the Treasury and the Fed that could intervene in the way that they did. And their intervention did change the financial and the regulatory landscape as they married up versus financial institutions, commercial banks and I banks, as they essentially nudged the last remaining investment banks into their own hands under the Bank Holding Company Act. The government became an insurer of money market deposits much like bank deposits and took other actions like essentially owning an insurance company and now an automobile company. This has changed the regulatory landscape. I think it has given certain people a sense of momentum that perhaps it is Fed and Treasury that should be the regulator of choice. And I think this has led many people to advocate an increased federalization of regulation and at the federal level increased consolidation of regulation and I think its incumbent on various administrative agencies, the SEC being notable today, to remind various constituencies that it has a strong historic record as Joel and Theresa have indicated, that it has remarkable strengths in its unwavering commitment to investor protection. So I think it is important to acknowledge regulatory shortcomings, there are some, and to advocate where constructive change can take place and there are a host of areas whether it's the over the counter derivatives market mentioned by Joel or hedge fund regulation of some kind or credit rating agencies or harmonizing the regulatory schemes of investment advisors and broker dealers and ramping up the arsenal of sanctions available to SEC enforcement officials. I think its important to focus on those constructive areas where the historic mission of the SEC can be strengthened and I think if that is done, I think there is no question the SEC will be here in 2034 and probably far beyond that.

JOEL SELIGMAN: Don, when Theresa was offering her analysis, she in effect paraphrased the old adage that the SEC is the cop on Wall Street. Does Wall Street still exist the way it used to be? We are dealing in a world that has become so globalized, that the very nature of regulatory challenge of the Commission has fundamentally changed. Will we have the chance to celebrate the 100th birthday of the SEC on June 6, 2034?

DONALD LANGEVOORT: I think there is going to be an agency. We will however have to talk about a bunch of issues about what's the appropriate size and scope of the agency that regulates the financial markets. To answer your question very specifically in a globalized marketplace and there is going to be increased pressure for there to be coordination among the world's securities regulators. There has to be a regulator in the United States of the size and scope appropriate to the global regulatory task and that's something more than what the SEC's assignment is today. I think for a global regulator you have to have an agency with broader authority here in the United States. What its name should be I don't know. I wrote down the "Investment Securities Commodities Markets Trading Platforms and Dark Pools Commission." There has to be a better acronym than that, so keep the brand name SEC. But the task is global. It's very easy to throw up your hands and say, that the task of reinventing financial regulation in the United States is so vexing. How could we possibly imagine a world of securities regulation? But that's got to be the project and I think whatever we do in Washington over the next year or two to reinvent securities regulation, to strengthen securities regulation, has to be with a view towards creating a regulatory with a global voice.

JOEL SELIGMAN: Donna, when the Commission was initiated in the 1930s, securities trading was different than commercial banking, insurance was a state problem and commodities regulation was trivial and non-financial. That's not our world anymore. As

you focus on the evolution of what's likely to occur in financial regulation in the next 25 years, how should the SEC perform?

DONNA NAGY: Well, I agree with Don. I think we are going to see a Securities and Exchange Commission that is more globally focused, more innovative - focusing not only on the products that we have today but also trying to get ahead and figure out the types of products that will be developed down the road. I expect we'll see a significant amount of agency resources going toward risk management. So in addition to a more innovative and globally focused agency, I would expect to see one that is more forward-looking.

JOEL SELIGMAN: Let me turn to my old friend Bob Thompson, that is my friend of many years, not old. Bob, tell me about the SEC in 2034, will it exist? How is it going to be different?

ROBERT THOMPSON: We can look back to the SEC's origin which was during a time in which there was a real belief in experts to solve the problems. Bring them in government, rein in markets and let experts do it. And the SEC is still the product of that and there is still a need for that. If you think about the pros and cons of agencies, the SEC is an independent agency. Contrast the last crisis, after 9/11: Homeland Security was created as a Cabinet department. A bunch of agencies were rolled up into an executive agency, contrast that to the last year in which all of the discussion is how we solve systemic risk or financial products, we solved these by using independent agencies that are outside the executive department. So I think this heritage of expertise, the heritage of independence and thirdly the fact that SEC has always been able to harness the knowledge and the expertise of markets in a way that other agencies don't. Those things will still exist in 2034, those characteristics will still be needed and so I think it is clear that we will have an agency with those characteristics in 2034 and as someone who has spent most of my academic life with the SEC brand name I selfishly want that to survive but I can't offer a better name than what Don did.

JOEL SELIGMAN: Bob, you referred to systemic risk and this is clearly a topic that is receiving a great deal of attention in Washington. There is a lively debate going on right now as to how we can address systemic risk. We have seen a 54% Dow Jones collapse between October 2007 and March 2009. Significant actors - Bear Stearns, Lehman Brothers, AIG, Merrill Lynch, Wachovia - have folded or merged. We only seem to be reacting after the fact. The inspiration that Congress has at the moment, is there a way to be ahead of the curve? Is there a way to better predict and obviate systemic risk? The debate in part is between those who are articulating a belief that should dramatically empower the Federal Reserve System versus those who say, "Hold on for a moment, the Federal Reserve System knows some things very well but may not know investor or consumer protection very well. We need more of a council approach." Don, what is your view on the systemic risk issue?

DONALD LANGEVOORT: Nice easy question. We do need a systemic risk regulator. I don't think the SEC has earned that responsibility. I don't think the Federal Reserve Board has earned that responsibility. So I would be inclined to create a new group staffed by economists, financial people - and some lawyers, too - that will have the authority to speak to systemic risk. That is absolutely essential. It is also absolutely essential that systemic risk regulation, important as it is, not shove aside the business of investor protection. The study of prudential regulation versus securities regulation as you know goes back many decades, in many different countries. And one thing you discover

about prudential regulators is they like to keep secrets. They don't like bad news being sent out to the public. Our economy is properly built on a high degree of transparency. If we don't have an investor financial protection function situated outside of prudential risk regulation with authority and autonomy, we are going to be in deep trouble. I think we need at least twin peaks. You may need another peak beyond that but at least twin peaks. How do you separate the two? That is very difficult because if you were to say, for example, that the systemic regulator can claim something like short sales - after all short sales can be destabilizing, they can certainly introduce risk into the system - and that trumps the SEC's historic ability to address short sale type issues, again we are in trouble. There has to be a division of responsibility that allows for the SEC's autonomy over investor protection. Who's the tie breaker going to be? I think my inclination would be to leave it to Congress. Let there be a public playing out of conflicts rather than try to internalize dispute resolution as between prudence and disclosure into a single structure. So I think that's the task. You design a framework based on something like a twin peaks model and you then have to tolerate I think some degree of conflict because we don't want a monolithic financial regulator.

JOEL SELIGMAN: Even the very term systemic risk embraces two different concepts. One is to recognize that we are dealing with systemic challenges to a financial system that are not monoline, the other when you emphasize the risk is that sometimes these are very fast moving challenges and we are all well aware of emergency meetings long into the night, typically always starting on Friday and going till Sunday where someone has to decide, does Lehman Brothers live or die? How do you address Bear Stearns? I don't think we can leave that to Congress; we have to have something in place. Let me turn to Donna. What would your advice be if Congress said, "Professor Nagy we now want you to be czarina of the universe. Tell us what to do."

DONNA NAGY: Certainly there is some advantage with placing a single entity in charge of systemic risk, and the proposals about which I am most familiar identify the Federal Reserve as that single entity. But I tend to favor the "council" approach that has been offered as an alternative. Bringing a number of experts, from a number of agencies, around this issue would recognize its complexity. The Securities and Exchange Commission certainly deserves a place on that council, along with the CFTC, the Federal Reserve and other banking regulators.

JOEL SELIGMAN: When you focus on what may be new legislation in the 2009 calendar year it will not just be an agency whatever its name or council whatever its name is dubbed a systemic risk administrator but there will be a lot of substantive detail and one of the issues that's been floated is whether or not above and beyond a full disclosure emphasis of securities law or the safety and solvency emphasis of prudential or banking regulation, there should be concepts that are being associated with what is called a consumer financial products commission and these for securities lawyers are typically more merit regulation concepts. Let's now make Professor Gabaldon czarina of the universe. If you were advising Congress as to how to address systemic risk, should this be part of the mission or objective of the new systemic risk administrator?

THERESA GABALDON: If I were czarina I would echo things that both Don and Donna have alluded to already but I would say that to my mind protection of consumers per se is not necessarily to me central to the notion of regulation of systemic risk. It's an important task and I think someone should be doing it and as I go down that road I start to recognize that bundling securities, mutual funds, that sort of thing into a consumer

protection agency, to me it doesn't quite make sense because to me those types of investments do relate much more centrally to systemic management. That doesn't mean that we haven't all learnt that mortgage lending practices may also tend to have destabilizing effects. But I do think that you can sort out the consumer end of that much more neatly as opposed to the packaging repackaging kinds of things which do go to the system as far as I am concerned.

JOEL SELIGMAN: Let me return to Bob at this point. One of the challenges in the contemplated approach to systemic risk touches another note that you sounded in your first statement and that is the significance of the independence of the SEC. The Department of the Treasury, of course is not independent but it has a significant role in designing current proposals from the Obama administration. The Federal Reserve System is. What has changed but doesn't get spoken about much is that much of federal policy is now made on a collective basis, sometimes by the President's Working Group. What risk does a systemic risk administrator pose to the independence of the SEC? How does one harmonize the securities expertise that several on this panel have praised with the challenge of trying to avoid the next debacle?

ROBERT THOMPSON: I think the real risk is that securities regulation gets lost with a systemic risk regulator. As I look back over the last year, if you think about how the debate has changed since August. For most of that period of time the focus has been on a systemic risk regulator and the Fed has been the prime candidate for that. At different points in time we have had discussion about a financial products regulator, Professor Warren has pushed that very effectively. What is missing from that is the traditional expertise, the value added, the relative value of the SEC which is not systemic risk and not necessarily consumer regulation of financial products but just the exchange part of the name, it's the market part of the name, it's the expertise part of the name. And if we go to a systemic risk regulator think about the discussion last fall when the Fed was going to do it all, more like the UK. I kept wondering what's going to happen to the things that matter to investors and to the markets. And I think that's why there needs to be at least a twin peaks but then the question is how do you coordinate it, we have the President's Working Group, who chairs that? The Secretary of the Treasury. That's a different model. Again I go back to my first point, if you think about how we do science regulation in this country is through a different model without the same independence that we have. Finance is different, money is different. We want independence for money regulation. We have a greater sense, we are all in it together, we rise or fall together and so we want some insulation from the political process without separating it from the political process. And I think that part, systemic risk hopefully will not occupy so much of our attention for the next 10 years, 20 years, 30 years or maybe even 75 years as it has this last year but the market regulation concerns are going to be with us regularly. So we need to have a plan, a model that deals not just with systemic risk but with what's been done since 1934 and that needs a separate regulator.

JOEL SELIGMAN: Let me turn to Lyman at this point. When we use phrases like twin peaks we are talking about two levels of federal regulation but when you focus on our securities regulation today there are 53 states and other jurisdictions which provide blue sky regulation. Indeed if you look at aggregate, there are more personnel involved in securities regulation at the state level than at the federal level. Don's point is absolutely right that there is increasing energy going towards globalized markets. What happens to state regulation if we move to a new world with greater powers for systemic risk than the federal government? We will talk in a couple of minutes about the scope of what this

might involve. Do we still need state regulation? Do we need a different kind of state regulation? Do we need a different type of coordination with the federal government?

LYMAN JOHNSON: Yes, I mean it does raise issues not only of regulatory competence but in our democratic society it raises issues of federalism and historically the states have been important regulators of securities and they bring a lot of expertise as well as personnel. They can examine a lot of regulatory ground much more closely than can the SEC or certainly any global authority. So I think as part of what I mentioned in my first comment, part of this move toward consolidation is not simply a consolidation within the federal government but I think there are many people that would try to upstream state regulation into federal hands. And I think many of the arguments that would be made on behalf of states are the usual arguments that are made on behalf of federalism. When someone doesn't like a particular regulatory landscape such terms as fragmented or fractious or balkanization are used. But when one wants to advocate its advantages one can use such terms as pluralism or diversity or multiple vantage points. And I think it does relate to systemic risk because I think Joel made an important point in his first comment. Systemic risk is a term that is used with precious little definition. And I think there is a difference between dealing with systemic risk once it is upon us as the Fed and Treasury had to do last fall, and dealing with systemic risk by trying to identify, investigate, report and share information about those practices, those institutions and those markets where systemic risk may be created before it actually blows up into a full scale problem. And I would advocate the virtues of multiple vantage points, certainly again as at the federal level, there has to be thought given as to how do we coordinate this information. But I think there will be an enduring role for states and I think like many administrative agencies it will be incumbent on those bodies to make the case as to why they can continue to be effective enforcement agencies.

JOEL SELIGMAN: Above and beyond what has happened in finance, what is happening in Congress, the Supreme Court very recently granted certiorari in a case which focuses on the constitutionality of the Public Company Accounting Oversight Board. The two to one decision of the D.C. Circuit affirming constitutionality had a very intense dissent by Judge Kavanaugh and an author who has focused a great deal of attention on the constitutionality is with us, Donna Nagy. Donna has argued that the Presidential appointment process in the PCAOB is unconstitutional and that was certainly a theme that Judge Kavanaugh agreed with. I am not going to ask her to tell us how the Supreme Court will come out and I am not going to ask her to reprise her article but I am going to focus on the Washington question. Suppose the Supreme Court does decide that the Presidential appointment process in the PCAOB is unconstitutional and Congress continues to believe that PCAOB is valuable. What should Congress do at that point?

DONNA NAGY: As Congress provided in the Sarbanes Oxley Act, the five members of the PCAOB are appointed by the five SEC Commissioners. One of the claims before the Supreme Court is that these five members of the PCAOB are in fact "principal officers," and the Constitution provides that principal officers must be appointed by the President of the United States and confirmed by the Senate. So to answer to the "Washington" question: if the Supreme Court finds that the current structure of the PCAOB violates the appointments clause, I would say that Congress should take the ten minutes or so it would take to rewrite that provision of the Sarbanes-Oxley Act, by providing for Presidential appointment and Senate confirmation of the five PCAOB members. But even if we resolve the constitutional issue, I think Congress should

consider additional redrafting. The PCAOB was initially created as a nonprofit corporation in the private sector, and the Act states specifically that the PCAOB is not an entity of the Federal government, and that no member or employee of the PCAOB shall be an officer or employee of the Federal government. The Supreme Court now has to decide the degree of deference that we give to Congress on the “principal officer” question, when Congress itself has made the decision to make this a private entity. Congress’s determination that an entity is private is not dispositive for purposes of the Constitution, and the PCAOB conceded in the initial round of the litigation that, at least for the purposes of the Constitution, the PCAOB is part of the Federal government. Accordingly, even if the appointments issue is resolved and the related separation-of-powers issue is resolved, the language in the statute still has the PCAOB as a private entity. And that means that for other purposes, non-constitutional purposes, the PCAOB would not be subject to a host of requirements that apply to Federal agencies – for instance, the Freedom of Information Act, or the Sunshine Act, or the Administrative Procedures Act. If Congress goes back to the drawing board, it should rethink this whole “private regulator” issue and make the PCAOB a part of the Federal government for all purposes.

JOEL SELIGMAN: Let me ask Don for advice. Don, one of the challenges historically with the SEC has been a kind of episodic disconnect between market booms and the budget of the agency and staff size. A number of people have periodically written and urged that the SEC should be self funded along the lines of the Federal Reserve or the FDIC. I know you have a bit of skepticism about this. Let me ask a two part question. First, is this a real problem, do we need to do something? And second tell us about your skepticism.

DONALD LANGEVOORT: Sure. The SEC is grossly under funded. But we have to disconnect the issue of does it need more funding from how do you go about funding it. On the first issue, I have played the following thought experiment. Suppose God’s assistant took you to the top of a mountain and asked you to look out at and we have heard these numbers so many times, 12,000 public companies, 5,500 broker dealers, 11,300 investment advisors, 4,500 mutual funds. And then you notice there are a lot more creatures running in between all those larger entities. So now, ask how much money would you need to police that world that you see out there? First of all you would be dumbfounded. But then if somebody asked, how about around 4,000 people and roughly \$900 million/ \$1 billion budget, you would laugh. You would say to God’s assistant, no way. The number has to go way up. How do you assure that? What we want is a stable funding source and my skepticism is really one of stability. Recently, we have seen many broker dealer firms where the compliance function which is funded by transaction driven revenue have their compliance budgets go way down because of poor market conditions. That would be unfortunate if the same thing happened to the SEC. If we could create a stable funding source that allows the Commission to address all the very tough issues it faces on a real time basis, I would love to have it. I just don’t know how I invent that funding system that isn’t overly market sensitive.

JOEL SELIGMAN: Well, I guess I would suggest let not the perfect be the enemy of the good. The system at the Fed and the FDIC may not be perfect but it seems to be more preferable. To take you to the second point, obviously there are many details that would need to be addressed if this was implemented for the Commission including compensation levels so you can retain qualified senior staff. But having said that the

challenge we have is the current system does not seem to function well during market booms.

DONALD LANGEVOORT: Absolutely right. My concern is purely skepticism about designing a funding source. It really does have to be a dynamic system. It can't be, every broker dealer shall pay x amount of money because the numbers change because of things like consolidation. So that doesn't provide you with enough stability. You are also getting into fundamentally political questions that I am doubtful Congress would ever leave to the agency.

JOEL SELIGMAN: Let me turn to Lyman. Lyman, you talked about federalism but realistically one of the most critical aspects of securities regulation today involves self regulatory organizations. The leading one and I speak with some bias because the current SEC Mary Schapiro was the previous CEO and chair of FINRA and I serve on the board of governors. Proposals have been suggested to amplify the scope of SROs. Should FINRA, for example, not only address broker dealers but address investment advisors? This question took on real acuity during the Bernie Madoff case. FINRA's regulatory mission essentially is broker dealers. Mr. Madoff not only claimed to be a broker dealer but also an exempted investment advisor as well as a hedge fund. If we can strengthen the ability of securities regulation to work at the SEC and at the federal level through effective SROs, do we need a broader scope for the existing SROs?

LYMAN JOHNSON: I think that's a good question and I think in former Secretary Paulson's blueprint of 2008, there was a dual thrust to it. One was a decided consolidation of functions at the federal level and the other was movement in the opposite direction and a lot of reliance on SROs. SROs certainly have advantages, they are on the ground, they are nimble, they understand what's happening in markets and among the actors on the markets. I think they are always subject to some concerns and that is whether they are going to be more allegiant to the interests of the public as opposed to various constituencies be they broker dealers or advisors or listed companies in some cases or even investors as to those SROs that are publicly held. Other SROs, you know there could be exit from SROs, for example, those that are subject to regulation at the exchange level, you could simply delist, I mean there are possibilities for exiting. As far as the point that you raise, I think that FINRA has come under some criticism for a number of things. Now it's simply not having perhaps a broad scope but they provide rather flimsy data on certain things that are within their traditional scope and that is disciplinary proceedings and some other matters. So I don't think that SROs politically and from a policy standpoint are going to be a centerpiece of reform. I think there is much that can be done but I think in the current environment they are going to play more of an ancillary role than a central role.

JOEL SELIGMAN: Well, let's focus on what is likely to be another set of issues and let me turn to Theresa to address. There are vast areas in the financial landscape today that are not essentially regulated. These include credit default swaps, OTC derivatives and hedge funds, among others. There are other areas such as municipal securities which are regulated through a somewhat different system than conventional securities regulation. If you were going to address Congress on what your priorities for expanding scope would be, what would you focus on and why?

THERESA GABALDON: To tackle the easiest part first, I think, I certainly would think that it is high time to bring municipal securities into the tent of the SEC and to regulate in

that area and fashion a system that is much more parallel to that for issuances by non-municipal issuers. I think that federalism issues that once seemed to cloud the area have fallen away, we have come so close to actually mimicking that type of regulation through the backdoor broker dealer regulation, it seems to me that its time to simplify and to make it much more parallel. With respect to the other gaps to which you refer I don't think I have ever met an academic although I... pardon me, there is one sitting right here who thinks that it was a good idea not to give the SEC jurisdiction over financial futures. When you are talking about systemic risk regulation the idea that you don't have a single regulator who is looking both at the regular financial products and financial futures as well, just seems to me to be unjustifiable. Now, I understand that at least today we are not talking about an actual merger of the SEC and the CFTC, but that could change, we might be talking about it differently in another couple of days. I definitely could see a merger of the functions as far as financial futures are concerned but having sort of a stripped down CFTC survive with respect to agricultural commodities. But again I think that the only justifications for keeping the SEC from regulating the financial futures, derivatives, et cetera area have to be fairly blatantly political.

JOEL SELIGMAN: Bob, hedge funds, how would you address hedge funds in this potential new system of financial regulation we may see.

ROBERT THOMPSON: I think we are heading to more regulation which is an easy answer, as to what it is much harder. I think the big challenge is a point Don alluded to earlier. Don's point was about prudential regulators not wanting to have a lot of transparency and hedge funds don't want to have a lot of transparency and there is going to be a push back about this that is going to happen perhaps this summer. I think the SEC is actually well positioned for that because it has always dealt with the issue of when is information valuable and is not disclosed, particularly on the stock exchanges. Floor brokers is a way that you trade without information, dark pools raise a similar issue of information versus no information. I think we have got to face the same issue with hedge funds and I don't know exactly what the parameters of it will be. I think there will be a systemic element to it but there will also be a trading element to it.

JOEL SELIGMAN: Let me give you a hardball question.

ROBERT THOMPSON: Well, I was afraid you are pulling back.

JOEL SELIGMAN: One of the issues that a future type of hedge fund regulation will contemplate will be, will there be transparency with respect to short sales? There are some hedge funds managers who will argue if we have to disclose short sale interests, we are out of business. And there will be others who argue that look if you are concerned with systemic risk we don't have any problem with relevant information going to a systemic risk administrator, what we are concerned about is the companies who are short selling, knowing about it. This is a quite different approach than the Commission has typically taken with respect to market data.

ROBERT THOMPSON: And it's hard, I think we will see disclosure to systemic risk regulators and my guess is that will happen. I think it's much harder to figure out what's going to happen in terms of public disclosure. And my guess is that in one sense looking back over the credit crisis, hedge funds per se was not the push point where disaster happened. And so my sense is that this is going to evolve but I think we may not see that kind of disclosure because you can make an argument as to how the markets

function, but my guess is we will see disclosure to systemic risk regulators and not disclosure to the open market.

JOEL SELIGMAN: But you would assume that there will be registration of hedge funds?

ROBERT THOMPSON: My guess is there will be registration of hedge funds and that will be a 2009 item if I were guessing.

JOEL SELIGMAN: Don, let me turn to another scope area that received a lot of attention, credit default swaps, OTC derivatives. I will now make you the czar of the universe.

DONALD LANGEVOORT: I am God's assistant. I think the Commission - in its public statements by individual commissioners and staff - has done a very good job of trying to get its arms around an issue that is really unsolvable on a systematic basis. Credit default swaps initially emerged as customized arrangements between two counterparties to meet very specific needs. Over time they standardized to some extent, as most contracts do. But there is nothing about them that makes them inevitably highly standardized. Of course what we want to do is push them onto trading platforms, through clearing mechanisms. They give us a handle on as much as possible. But the more we push in that direction the more the temptation is going to be for any two counterparties to defect from the system by saying, "No, what we want to do is different from the standard. We want to do customized." And if that happens too easily, then you are simply going to repeat the dark pools phenomenon. Unless you are going to shut the doors and windows absolutely to that I doubt there is an easy solution to the problem. What would I do as - whomever I am? I think the response has to be two fold. First, move as much of this trading as the market will tolerate into clearing platforms to get the margin type regulation and the transparency. Second, you have to go back to what you just asked Theresa and Bob with respect to customized. Do you really want to shut that world down? I think innovation is really important for the United States in finance. I did not want a system where you can't design something and bring it to market without a year or two of regulatory oversight. I think you have to leave the windows and doors at least partially if not significantly open and then identify the systemically important institutions where you are going to look as a regulatory matter at everything they are doing on exchange, off exchange, whatever. That's not going to be an easy world to deal with and it's going to be a globally challenging world. But sorry, that's the best I can do.

JOEL SELIGMAN: Well, let me just see if we can tease out one other part of your analysis, who should regulate credit default swaps and OTC derivatives?

DONALD LANGEVOORT: The SEC. I will give you the short answer why. Because and again CDS is such a broad range of what they might account. But so many of them are specifically related to particular issuers, credit risk, the bonds, the debentures, whatever underneath. And I would not want a world that bifurcates the SEC's regulatory authority over primary debt but then these open this other world. I am for merging the CFTC into the SEC with the SEC as surviving entity and internalizing that futures function notwithstanding all the political obstacles that stand in the way because I don't know how I would draft the division of responsibility. And from time to time the CFTC and the SEC play nice and agree on divisions of responsibility, that's all to the good, historically that hasn't been sustainable and I think you need a more powerful solution to the problem,

that's why I would keep pushing the merger issue even though I am fully aware of what the political obstacles are.

JOEL SELIGMAN: Let me in our remaining time turn to other topics. Donna, another actor in the financial landscape who's received a great deal of attention in recent years has been the credit rating agencies and obviously credit rating agencies have an internal structural challenge. They are paid for by whom they rate and this has been a conflict of interest that has received a good deal of attention in Congress and elsewhere in recent years. There will probably be a number of new initiatives with respect to credit rating agencies. Would you address this fundamental conflict issue?

DONNA NAGY: The conflict of interest issue is one that we have seen before – the issuers whose securities are being rated are paying the raters. We saw similar conflicts years ago with respect to research analysts who were being influenced by the investment banks that funded their salaries and bonuses. The Securities and Exchange Commission, along with state regulators and the Department of Justice, as well as Congress, brought about substantial changes to the industry, so that there is now more of a wall between research and investment banking. Yet there are many opinions as to whether or not alleviating the conflicts has enhanced the quality or the amount of research. So I think we have to be very careful about how we manage the conflicts associated with the credit rating agencies. Information is vital to the securities markets, and more information is better than less, provided that the information is accurate. There have been proposals about investor-owned credit raters, and I think that is a change worth pursuing. I think the buy side here is a very sophisticated one – the consumers of ratings are often large institutional investors, who certainly are very sophisticated. So having a more active role on the buy side, and having some ratings come from that side, I think will do much to mitigate the conflicts.

JOEL SELIGMAN: Thanks Donna. Lyman, an issue that received a lot of attention has been executive compensation. What should SEC or Congress be doing with respect to executive compensation whether it's with firms that are now receiving TARP or other special funds or more general?

LYMAN JOHNSON: Well, I will make a forward looking statement here and that is executive compensation will always be a hot button issue, it's just inescapable. And also I think it's pretty evident that there are a lot of faulty compensation models out there and that many boards of directors of public companies are being appropriately reprimanded for creating perverse incentives to engage in highly risky behavior. I think at the regulatory level this has historically been a matter handled by state law although many critics would say not very ably handled by state law. The SEC's role traditionally has been a disclosure role. We saw that a couple of years ago where they amplified yet again the kinds of disclosures that reporting companies had to make about executive compensation. We see a little bit of substantive regulation through Sarbanes Oxley in the prohibition on loans to officers and directors and through the claw back provisions where there are financial restatements. We certainly have overt federal regulation through the legislation. Joel mentioned that those companies who receive financial aid now have their bonuses regulated. And Senator Schumer has upped the ante even further seeking through his proposed bill on shareholder bill of rights to actually legislate a shareholder say on pay. I think at the state level the problem is really a governance problem, shareholders don't within the system of corporate governance have a say on pay, in fact they don't even have a say on officers. They certainly could create that

through by-laws. They could create a system whereby the shareholders rather than the directors actually elect and therefore compensate the officers, they have not availed themselves of that. And so the debate has really been about shareholder access to the company's proxy statement and that has been a very contentious issue for years. I think we see some resolution here through Delaware's recent amendment to its corporate statute that does permit, not required but permit, shareholders to amend the by-laws so as to permit shareholder nominees to be on the board of directors' proxy materials but its permissive. It doesn't as such regulate or limit, it leaves that to the by-law proponents themselves. Interestingly almost simultaneously, the SEC has floated its recent proposal that would mandate access. And a couple of questions that I would raise are these, first of all, we all know the proxy solicitation language of the statute Section 14a is pretty sparse, it doesn't say much. And the question is whether you can glean from the solicitation of proxies, a process oriented statute, the ability to mandate that shareholder nominees be on the board of directors' proxy materials.

JOEL SELIGMAN: Let me take that question in a different direction and pose it to Theresa. Theresa, should Congress enact legislation which would unequivocally establish SEC jurisdiction to mandate access to the proxy in the form that has been described in press documents recently? One of the traditional concerns has been the cost of access to proxies under Rule 14a-7 where shareholders do have access has been so prohibitory that without a non-cost type of access, shareholder nomination is very rare. What's your view on that?

THERESA GABALDON: I would favor that type of legislation because I honestly don't see the opportunity for mischief that some of the detractors do. I think that allowing shareholders' access for the purpose of expressing themselves with respect to the election of directors and with respect to executive compensation could go a long way towards addressing the perverse incentives that others have referred to. And I honestly don't see the downside.

JOEL SELIGMAN: Well, I think there will be a lively debate but we will see how it comes out. Bob, let me give you what will be the last question on the panel because we are really honored that the Chairman of the SEC, Mary Schapiro, is with us and I know all of us are eager to hear her thoughts on these and many other issues of the day. One of the saddest events of the last year has been the disappearance of the five largest independent investment banking holding companies. It is stunning that within a period of just months we lost Bear Stearns, and Lehman Brothers; we lost Merrill Lynch as an independent entity and then J. P. Morgan and Goldman Sachs became bank holding companies. We talked about systemic risk administrator and we focused implicitly on information flows and attempts to avoid crisis. But when you focus on financial supermarkets, they are not limited typically to insurance or banking or securities. Who should regulate financial supermarkets and why?

ROBERT THOMPSON: The premise for your question or at least what I would add to the premise is, take a look over the last 20 years at the share of finance of our gross domestic product; it has grown dramatically at least until the last 12 months. That's where those five firms grew and others as well. Did those functions disappear when the firms disappeared? And the answer is, yeah, actually we have seen a sea change. We have seen the finance growth spurt of the percentage of compensation taken down, that had been rising since the mid 1980s. And so I think we are in for a period in which finance returns will be less, perhaps not that what it was in the early '80s or the late '70s

or before but to a more humble role. Now, does that change the regulation? Well, there's a greater need for government than there was and I don't think the consolidated entity review was particularly successful for the SEC but I think there remains a need for government function and the SEC is the best position to do that. So I think we will see a reconfiguring of that basic function and it will still exist but it will be in a smaller scale because finance will be less important to the economy than it has for the last ten or 15 years.

JOEL SELIGMAN: But let me thank a panel that has addressed a dazzling number of issues in one hour. I hope we have suggested some of the complexities of the problems and clearly this is going to be an ongoing discussion. I would like at this point to introduce the SEC Chairman, Mary Schapiro. I will just offer a very brief non-biographical introduction. When I accepted my current job as President of University of Rochester my wife looked at me and said, "This is the perfect job for you. You will never be bored." Well, I must tell you my life compared to Chairman Schapiro's in the last four months has been placid. She arrived in the midst of an economic tsunami, with a new President determined to make financial regulatory reform a priority. The number of challenges she has faced in terms of regulatory initiatives and enforcement personnel changes on an ongoing basis is dazzling. She's the right person to be leading the Commission at this point. She's tough, she's fair, she brings an experience not only from the SEC and FINRA but also from the Commodities Futures Trading Commission which could not be more appropriate. I join everyone in the audience in asking, now that we have teased up 14 or 15 major issues for you in the time allotted, tell us what the answers are?

MARY SCHAPIRO: Joel, thank you so much for that lovely introduction. It's really an honor to be able to welcome you all to the SEC today to commemorate our 75th anniversary. And while it doesn't look like a lot of people in the audience, we are being webcast and what I discovered is there sometimes are thousands of people watching. So lots of people have had the benefit of this really brilliant panel and I really want to thank all of you, Joel, you especially for chairing it but for your incredible insights. I found it fascinating to be able to listen to the thoughts that you had on everything ranging from our budget to our executive compensation issues that we are all facing to questions of dark pools and fragmentation and really so enlightening and so helpful to us at the Commission. So, thank you very much.

I am actually not going to answer any of those big questions because I know that I stand between you all and an ice cream social out in the lobby. But let me just say a few things maybe to put a close to this afternoon's event. As you all know and Joel perhaps knows better than anybody else because he's the true historian of the Securities and Exchange Commission and the keeper of our history, this agency was formed during a very difficult period in our nation's history, the stock market had plummeted, unemployment was skyrocketing and Americans had lost so much including their confidence in the marketplace. And it was really in response to that that our agency was born. We were created to be the investors' advocate for 75 years, that's what we had been doing, advocating for investors. And now here we are 75 years later, we are emerging from an economic crisis that is very similar to that we faced in the 1930s. But this time we are being asked are we really up to the task? And like all of you I know the answer is, yes, we are. Indeed if we do our job correctly, if we perform at the levels I know we are capable of we can help restore investor confidence and perhaps in the process even jumpstart the economy. That means doing what we do every day, uncovering fraud,

pursuing swindlers, chasing the evidence, ensuring transparency and truthfulness and focusing single-mindedly on the needs of investors. And since I arrived here about four months ago, I have seen every day the dedication and the commitment of the men and women who work here. I see how investigators and attorneys and accountants come in early and work long hours. I see how they advocate vigorously for their positions and pursue the evidence no matter how complex the case maybe. And I see an eagerness to live up to the high reputation all those who came before us earned for this agency. You know we have a remarkable group of SEC staffers and an equally remarkable group of SEC alumni and like me you all know how much this agency does on behalf of investors both big and small. We are acting today with a renewed sense of urgency and focus. In the area of enforcement we have brought on a new director and a new head of our New York office, two top notch prosecutors who appreciate the importance of bringing significant cases with meaningful impact. We have streamlined the formal order and the penalty negotiation processes to make it easier to get matters through the system. We have assembled a team to revamp our complaint intake procedures so that we are better able to handle those million or so tips we receive each year. And we have begun to hire new skillsets and upgrade our training so we can keep pace with the new financial products and strategies created by Wall Street. On the broader policy front, we have engaged in an active rule making agenda. Last month we proposed significant changes to the rules governing investment advisors who maintain custody of their clients' assets all with the goal of exposing Ponzi schemes and other frauds earlier in the process. In the area of short selling the Commission unanimously voted to propose two distinct approaches to limiting short selling, proposals that are intended to restore the investor confidence.

Later this month we will consider a series of proposals to strengthen the money market fund regulatory regime to ensure that investors are not buying a risk that they are not intending to purchase. And in the area of proxy access we have already proposed rules that would enhance the ability of shareholders to nominate company directors. And next month we will take up a package of corporate disclosure information improvements around compensation policies. But there are still much to do in the regulatory arena which is why we have been working closely with our fellow regulators to define the authority that's necessary to regulate the world of credit default swaps and hedge funds. And we are currently working with the administration to consider ways to fill any other gaps that may become apparent as a result of the financial crisis. And finally just yesterday I announced the formation of an investment advisory committee to give investors a greater voice in the work of the Commission. We have been around for 75 years because the American public understands that we are here for them. And with your continued hard work, support and commitment I think our next 75 years, although I hope I am not still here will be even better. This is a tremendous agency and I am proud once again to be a part of it. I thank you all for joining us today and I particularly thank our panel for all of their effort.

JAMES W. BARRATT: Chairman Schapiro, thank you for joining us today to share your thoughts about the SEC and its future. We are sure that you and your fellow Commissioners and staff around the country continue to provide the critical function of being the investors' advocate in these changing times.

I would also like to thank our distinguished panel for an excellent job sharing their insights today on the future of SEC. In case you missed it or tell your friends, the program is now permanently preserved in our virtual museum and archive at

www.sechistorical.org and I encourage you to access it again at any time. Finally congratulations to the SEC on its 75th anniversary. I thank you for being with us today. The Society is sponsoring an ice-cream social, out here at the multipurpose room out to your left. So thank you all for coming and good afternoon.