

**Securities and Exchange Commission Historical Society**  
**Interview with Susan Wyderko**  
**Conducted on April 29, 2016 by William Thomas**

**WT:** This is an interview with Susan Wyderko for the SEC Historical Society's virtual museum and archive of the history of financial regulation. I'm William Thomas. The date is April 29, 2016, and we are at the Mutual Fund Directors Forum offices in Washington, D.C. So, thank you very much for talking with us. We usually start with a little bit of personal family background. I saw that you were born in Indiana. Did you grow up there?

**SW:** Yes, I was born and raised in West Lafayette, Indiana, home of Purdue University. I'm the child of two biologists. I had an outstanding upbringing in the Midwest. My parents taught during the winter months, but during the summer they went on soil collecting jaunts across the country when we were younger, and then also taught in Europe when I was older, and I traveled extensively and learned to fish and camped a lot during the summers. And so I had just a terrific upbringing.

**WT:** That's fantastic. And then you went and did your undergraduate at Wellesley?

**SW:** That's correct.

**WT:** What did you study there?

**SW:** I was an economics major.

**WT:** What made you decide to do economics?

**SW:** I was fascinated with it. It was the subject matter that I liked the best. I minored in astronomy, so you can't say that I had a single-minded devotion to really anything.

**WT:** So then, you finished there in 1980 and went on to Cornell Law School.

**SW:** That's right.

**WT:** So you decided to do law. How did that come about?

**SW:** Keep in mind that when I was growing up, I grew up in a college town. I had never met a lawyer. Somehow, after I got to Wellesley and started talking to some of my teachers, I decided that the only job, really, for me was to be a lawyer, because I really liked to read, and I thought lawyers probably got to read a lot, even though I'd never met a lawyer up until now. So one of my professors, at some point, got me an internship with a lawyer in Wellesley, and I really enjoyed the work, and so I just decided to go to law school.

**WT:** Did you develop any interest within law as to whether you wanted to do litigation or corporate law or anything like that while you were there?

**SW:** I didn't. I enjoyed everything I took. Ironically, in view of my subsequent career, I did the worst of anything in evidence and trial procedure. Odd, because I then went and did litigation at the SEC. But I didn't really have any inclination to go in a particular area, and when I got out of law school, I joined a law firm, Miller & Chevalier Chartered and just was a general associate and did a little bit of everything.

**WT:** What were your experiences like there? Did you know that you wanted to do something different, like government, or did your move to the SEC just come up in some different way?

**SW:** I had been working for some litigation partners who were super, terrific people. But I did notice that even partners were carrying bags at the deposition, and not actually doing the work. And so, I had graduated from law school with a fellow who went to the SEC and was given a trial to do, and I thought that sounded like a lot of fun. So when they had an opening in his office, he called me up and asked me if I wanted to apply, and boy did I. So I went over, and Linda Fienberg hired me. And a few days after I got to the Securities and Exchange Commission, I was in the General Counsel's office, which at that point was litigating cases against lawyers and accountants for professional malpractice, essentially. They handed me a lot of Redwelds of audit papers and said "Here's your case. It's going to trial in a couple weeks. Good luck."

**WT:** One thing that I'm curious about, before I get too deeply into the SEC stuff, is that a few years ago we did a series of interviews with women in securities regulation. Particularly

people who came up around this time had a whole variety of different experiences. Some found that they had various difficult experiences. Others didn't notice it at all. What was your experience?

**SW:** At the law firm, I was too junior to really form any opinions whatsoever about women in the law. And once I got to the SEC, it was a place—and throughout my career at the SEC, I can say it was a place governed exclusively by merit. If you could do something, if you wanted to do something, you were told to go do it and do it well, and bring it back done. And so I never encountered any of those kinds of pressures about “can she do it because she's a female”.

**WT:** So now, I don't have a good sense of the chronology of your early career there. I know you worked in the office of the General Counsel, and also in Enforcement. So when were you in these different places?

**SW:** I started in the General Counsel's office. I was litigating Rule 2(e) cases. Those involved professional misconduct, and I was litigating almost exclusively against what we used to call Big Eight accounting firms and partners. And at some point, Mary Schapiro, I believe, Commissioner Mary Schapiro at the time, was heading a taskforce on administrative proceedings. And at that point in time, it was a little odd to have the trial unit and Enforcement doing all of the litigation of the SEC except for this little pocket of litigation tucked away in the General Counsel's office. It was a little odd. And so the taskforce recommended that the litigation in the General Counsel's office be moved into

the trial unit so that all the litigation was in one place, so I followed the work down to the trial unit.

**WT:** So could you tell me a little bit more about this 2(e) area and exactly how those cases unfolded, what they looked like?

**SW:** They were administrative proceedings, and I litigated some very large cases against Big Eight accounting firms. And they were unusual because they were very resource-intensive, and there were an awful lot of audit work papers involved, and so it took a lot of crawling through audit work papers. And keep in mind, I'd never even done a deposition, and I found myself in court introducing witnesses and documents. So it was a lot of fun. It was a huge learning experience for me.

**WT:** What was the law like in this area? Was it well defined as to what would constitute a misconduct, or was that something that you had to make a real case for?

**SW:** It was not settled, because there had not been a great deal of litigation in the area. And so some of the cases eventually went up to the D.C. Circuit and back down, and one of them I argued both at the Commission level and at the D.C. Circuit level. So the law was unsettled, and so that was fun. Because the law was a little unsettled, some of the large cases went just to the brink of litigation and then settled, because the accounting firm didn't want to take a chance on a trial.

**WT:** And I know that as time goes on the SEC—and probably it's part of moving it from the GC office into Enforcement—looked more intensively at professionals. Was that your experience? I was reading an article about this. I'm not sure if it's so.

**SW:** Yes, over the years, the SEC began looking much harder at lawyers and accountants as gatekeepers for keeping clients on the straight and narrow. And chairman after chairman, commissioner after commissioner was pointing the staff's attention towards these gatekeepers to make sure that they were advising their clients to do the right thing, that they were not letting other conflicts of interest come in the way of giving their clients good advice.

**WT:** So I know that, of course, this is an area that Arthur Levitt had a lot of interest in, but you say that commissioners and chairmen before that were also strongly interested in these kinds of issues?

**SW:** It definitely came to a head with Arthur, for sure, and he was extremely interested in the conflicts of interest in the accounting firms, the distinction between consulting and auditing. But even before him, Chairman Breeden was very interested in the gatekeeper issue, and before him Chairman Ruder, as well.

**WT:** So you were pretty specialized, then, in these 2(e) cases, or did you see other sorts of cases as well?

**SW:** I was pretty specialized at that point in time.

**WT:** So that's kind of interesting, because a lot of people who I've spoken to in Enforcement say that basically, whatever came up is the sort of thing that they would be involved in. Even geographically within the office, were you concentrated in a particular room?

**SW:** The time when I was in the General Counsel's office litigating 2(e) cases, basically, very little else came into that pipeline. When I moved into the trial unit, I did do some other cases with some other very talented trial unit attorneys. But the bulk of my larger cases, those were 2(e) cases.

**WT:** Who were some of the people who were working in this area, if you can remember? I know that whenever I ask this sort of question, people worry about leaving people out.

**SW:** Oh, yes.

**WT:** I don't mean to put you on the spot, and I know it wasn't on my list of questions that I sent, but I thought I might ask.

**SW:** I have to say, across the board, the litigators at the SEC were an incredibly talented group of people. I can't even think of one that didn't have an enormous amount of talent. So many of them came into the SEC after a career as a partner litigating at law firms, and it

was a great place to litigate. You were given complete freedom over developing your cases. All of the people I worked with were incredibly talented.

I would say that my mentor during this time period was a guy called Ben Greenspoon, who was in the General Counsel's office, an older guy, very crusty, extremely gracious with his time and talents and energy. I would come into his office, he would be eating his breakfast every single morning, and I would plop down and chew over with him how my case was going, the case of the day, and who I could get as a witness, and how I was going to shake loose these documents, and what I might do. He was just incredibly helpful in helping me grow as a lawyer.

**WT:** Fantastic, so then in 1997, you moved over into Arthur Levitt's office?

**SW:** Yes.

**WT:** Tell me a little bit about how that came about, if you could.

**SW:** I don't really know, but Arthur came into my office one day, sat down, and said, "I need a counsel. I want you." And at that point, I had two children and I was pretty busy, and I knew for sure that when you went to the chairman's office, you had to work really long hours. And so I said, being a very naïve and green person, I said, "Thank you so much, Chairman, but no." Well, one does not say no to one's chairman. One does not. So he came back, and at any rate, I ended up in his office. He, too, has been one of my



mentors. He is just an amazing human being. Well, many of the SEC chairs have been amazing human beings; we'll get to the rest of them.

But Arthur promised me that I would not have to work late, I could leave whenever I wanted. I did not believe him one little bit. And I was in awe of him when I got to his office, at first. I'll never forget I got into the elevator with him at one point, the doors shut, it was just the two of us, and he said, "How are you?" And I looked at him, and I was struck dumb. I had no response. I could not even speak. Well, we got over that, and I was able to speak very honestly and frankly with Arthur. He's remained a friend. He never talks to me or any of the other people he knows without aggressively moving forward in the conversation. "How are you? What can I do for you?" That's Arthur. And so the Rolodex of people that he knew and exposed me to in that office was just enormous.

**WT:** Did you have particular responsibilities, or did it range across everything that he had to deal with?

**SW:** I came in and became the counsel for investment management. Paul Roye was the division director, and Paul Roye was incredibly gracious about helping me understand what was going on. Barry Barbash, as well, was incredibly gracious, and I learned as I went. And that's pretty much my first experience with the Division of Investment Management. Arthur was very interested in mutual funds, in particular. This was the time of the rise of the self-directed investor, and so Arthur was keenly aware that

ordinary people were more and more being required to understand their investments, and in particular their retirement investments, and to make appropriate choices based on information that he was confident needed to be delivered in a better, more understandable fashion.

**WT:** And you hadn't really had many dealings with the '40 Act, the Advisers Act, and so forth before this?

**SW:** No, I really had not. He was also hyper-focused on good governance in the fund industry, and he was ahead of his time in some ways, focusing on this issue. The market timing scandals didn't happen for some time yet, for some years. He looked around, and he said we're putting all these duties on fund independent directors. Where do they go to get schooled? Where do they go to get good information? How do they learn how to do their job? And everyone looked around at everyone else, and Paul Roye said, "I don't really think there is such a thing." And so, Arthur being Arthur said, "Well, make it happen," so that actually is the origin of the organization that I currently work at, the Mutual Fund Directors Forum. It was formed as the Mutual Fund Directors Education Council at the instance of Arthur Levitt, who was chair. He told Paul Roye to make it done. Paul Roye went out and found a Dechert partner, Allan [Mostoff], who was just amazing. And he got David Ruder, a former chair, involved.

So it was a voluntary organization, and that was not a recipe for long-term success. But in the beginning, an awful lot of people came together to try and devote resources to

coming up with information that would help fund independent directors do their job better, in effect. Paul Haaga was very instrumental in these very, very early dealings, but it became –

**WT:** Who is he?

**SW:** He's currently at NPR, but that that point in time I think he may have been the ICI president at the time, but he was primarily the American Funds Cap Group. He ran the Capital Group. And so, that organization evolved, eventually then, into the Mutual Fund Directors Forum, once it became apparent that the organization needed a funding mechanism that was sustainable. And so it changed itself over from a voluntary organization to an organization where boards of independent directors joined, and the dues were assessed on an annual basis, and they came out of the assets of the fund.

**WT:** I see, so were you yourself pretty deeply involved with this whole process of getting this set up?

**SW:** I was tangentially involved. I watched it closely, as Arthur's counsel, made sure that it was continuing to be on track. But Allan Mostoff and David Ruder were the real engines behind making this happen.

**WT:** So another are—I was actually talking to Barry Barbash a week or so ago and he mentioned that, as with the accounting area in the investment management area, Arthur

Levitt pursued what you might call message cases to try and develop a legal framework.

Could you tell me a little bit about that?

**SW:** Well, yes. He had a lot of interests that he wanted advanced, and Plain English was a huge issue for him, for example, and investor education. And those issues, at least in my experience with him, those are the issues that I most closely associate with Arthur and my time with Arthur. He was passionate about investor education. Remember, this is the boom times. People are all of a sudden investing, and they're using this new thing called the internet, and they're in there with all four feet. And the crooks have discovered that reaching people through the internet is a whole lot more cost effective than trying to sit them down in a room and feed them a lunch, and then try and sell them something terrible.

And so he started—and this I was very much involved with, he started going out and did a bunch of town meetings. That's what we called them, the town meetings. And at that point in time, the major newspapers had investment seminars, daylong seminars, where you paid money and you'd come in, thousands of people, and they'd teach you how to invest. And so Arthur would get in on all of those, and we would insist that his speech be made freely available, so anyone in the community could come in and listen to him. And he would give his take on how you should intelligently invest your money, and how you needed to be an intelligent investor and beware of scams, and things like that.

But then we also had a whole program of investor town meetings that were completely sideways from the newspapers. We would go into a community, and we would rent space in the local hall, or if it was a small venue, the library, and Arthur would come speak to anyone who wanted to be there. There were events where there were thousands of people where he would come talk to them. He was so popular as an SEC chair, and he was so able to use his bully pulpit to talk to people about investor education. It was phenomenal to watch.

**WT:** And it's actually kind of in this period that the Office of Investor Education gets created out of, what was it, Consumer—?

**SW:** Consumer Affairs.

**WT:** Consumer Affairs, yes.

**SW:** Yes, so it gets broken off, that's right.

**WT:** But you had not yet joined that office.

**SW:** That's correct. So I was with him at these town meetings. The organizational legwork was being done by Office of Investor Education people. But I was involved because I was with him, helping write his speeches, helping prepare him. I'll never forget that there was one event, and I believe it was in Atlanta, and he had a sudden conflict come

up. He couldn't do the event in Atlanta. They were expecting over 1,000 people. I think he had to testify. And so I walked into his office and said, "Arthur, I can do it," and he looked at me like I had six heads, because, I mean, I was very young. But I had been watching him, and I knew his speech. I helped him craft it. And so it ended up that I went down, and I did the speech, but he was on the telephone so that he could answer questions. And apparently, in his office they were all laughing because I was giving the exact intonations that he did on the jokes that he said. I mean it was a great speech, don't get me wrong. So that's how involved I was in the investor education town meeting program.

**WT:** Tell me a little bit more about the internet aspect of things, because I guess it's also in this period that you have the Office of Internet Enforcement.

**SW:** Right, this starts up, right.

**WT:** Is that closely related to that, or were they two separate initiatives?

**SW:** They were two separate initiatives, but there's no question that everyone in the SEC was keenly aware that the internet was providing boom times for crooks and easy pickings for unsophisticated people. Culturally, we had not yet come to a realization that if you saw it on the internet it was not completely, 100 percent genuine. That just had not culturally seeped through to our consciousness yet. That was years in coming. But at that point in time, that investment opportunity came to you through the internet or through a forward

of an e-mail from a friend, it was just as good as a personal recommendation from your friend, and you would go with it. I believe it was John Stark who may have been the first head of that internet office in Enforcement, but it was set up to deal with this phenomenon.

**WT:** Just as long as we're on the topic—I know it's skipping ahead to this fake site that you set up, but maybe you could, just to stay thematically with that, you could tell me a little bit how that came about.

**SW:** Sure. So that was one of the highlights of my career at the SEC. This was when Harvey Pitt was chair. Harvey Pitt was just as enthusiastic about investor education as Arthur was, no question about it. He was incredibly supportive of the Office of Investor Education and Assistance. At that point in time, Arthur had made me the director of the Office of Investor Education, and so there was this incredibly talented press guy in the office at the time, John Nester. He's still in the press office at the SEC. And, just sitting down, spit-balling ideas, we in the office had this crazy idea, why don't we come up with a fake website that would look like a legitimate opportunity, though it would be promising returns too good to be true, outrageous returns, and have all the hallmarks of fraud. It would claim to be a big company, but its address would be a post office box—all the hallmarks of fraud.

And so we got going on this and we developed this awesome website. The company was McWhortle. The reason we picked McWhortle was that we Googled it and discovered

there was no living human being with that name, and no company, because we were really worried about inadvertently tarnishing someone's reputation. Ruth Pitt in the IT office designed the website. We got the NASAA, not the space people but the state securities administrators, to lend us their logo and go in on it with us. And the FTC, because of the privacy, stealing your information, because we also asked people to provide their Social Security number and their bank account information.

And so we came up with this idea, we pitched it to Harvey. Harvey was all on board. John Nester suggested a press conference with the chairman. To our surprise, Harvey said, "You bet, I'll introduce you." And then John Nester decided we would go talk to the folks at PR Newswire and float a fictitious—with their understanding that it was fictitious—a fictitious newswire release announcing the pre-IPO was now open for McWhortle Enterprises, and it was going to return beyond your wildest dreams.

So we cooked all this up. John placed phone calls to the major newspapers, because the last thing we wanted was to have a headline in the *New York Times* about how McWhortle had gone public and the SEC was sponsoring it. So we were very worried, but it went off without a hitch. Harvey Pitt came in with drumrolls, and explained that we had launched this fictitious website. The PR Newswire went out. We had 150,000 hits in the next couple of days from people landing on it. John voiced the voice of the purported chairman of this company. It was Thomas James McWhortle—that was the names of my two sons at this time—about how the SEC was supporting this wonderful, ideal opportunity. And he has a wonderful voice, and so it was incredibly compelling,



the whole package. But if you clicked to invest, you got a page with all of the regulators' logos and a whole lot of information about how to avoid online internet scams.

And so we had helpfully included a telephone number and an e-mail, and said on the website that the PR person for McWhortle Enterprises was Kelly Something-or-other, and we used that name because we had no Kellys in Investor Education at all. So every time the phone would ring and someone wanted Kelly, we knew it was a fake website call.

So we got an awful lot of e-mails. There was a big chunk of people who were really irritated that when they tried to invest, they kept getting a splash screen with all these dumb regulators' logos and stuff about internet fraud. They knew about internet fraud. That is not their issue. They wanted to invest.

So we got back to all of those people, sometimes several times. We had asked for—although we had no ability to take credit card information and Social Security information, but we had asked for it, because that's one of the things the FTC knew was a problem with identity theft. And so, who knew? We did get that on some of these e-mails. So we thought it was pretty successful. We launched several other fake scam websites as well. One of them was a fake mutual fund. ICI had an education foundation, and they went in on that with us, as well.

But interestingly, in the successive years, McWhortle.com started being integrated into curricula at high schools and colleges as an example of internet fraud. The students were sent to the site. Can you tell whether this is legitimate or not? How would you tell if it's an internet fraud? So we felt real good about that.

**WT:** This is very interesting. Could you tell me a little bit more about Arthur Levitt's interest in Plain English and how that came to be implemented?

**SW:** Arthur did not like gobbledygook, and he was very free in saying that. Now, he was not a lawyer, and I think that helped enormously in his ability to identify gobbledygook. Because many of us who are lawyers take a look at it and say, yep, that's the way it's got to be, henceforth, and party of the first part, et cetera, et cetera, because you've always written it that way. And he wanted to have disclosure that meant something to the reader, and so he had this Plain English project that he really, really pushed. And it was extremely unpopular to begin with, unpopular in the corporate community, and unpopular on the staff, because it was a lot of work on both sides, but it was work well done.

And so the Plain English initiative, he would award gobbledygook awards periodically for something that someone had picked out of a disclosure that was just incomprehensible. Again, he was using his bully pulpit as a force for good. And it has continued. There continues to be a push at the SEC for disclosures that are actually meaningful, as opposed to just legal boilerplate.

**WT:** One of the things that you hear is that you'll implement some simplification of disclosure, and then there's always a creep back towards more convoluted, gobbledygook types of things. Was that kind of the experience there?

**SW:** Absolutely. I think you can see that most clearly, perhaps, in the mutual fund prospectus area. The prospectus is like a yo-yo dieter. It gets big, it gets small, it gets big, it gets small, and we currently have the summary prospectus, but then we've got an SAI, we've got the statutory prospectus. It's constant tension between wanting all of the information to be out there, and a small enough bite-size piece of the information to be presented so that someone can quickly absorb the necessary information. And then you have a question about what is the best information to put in front of you in short form, and that conversation just keeps going.

**WT:** Okay, so you talked a lot about Arthur Levitt. Did you have a lot of interaction with the other commissioners, other divisions, as well, in this role?

**SW:** I did. The other commissioners during Arthur's time did not do town meetings. Later, some of the others did. Cindy Glassman, in particular, did some town meetings with us. But as his counsel for investment management matters, I was frequently called into other commissioners' offices because the Sunshine Act forbids, obviously, commissioners from gathering in a place so they had to do a lot of conversations through proxies. And I was one of Arthur's proxies, so I would go talk about the issues on his behalf to other commissioners.

**WT:** And now, in 1999 you became director of the Office of Legislative Affairs.

**SW:** Yes.

**WT:** How did that come about?

**SW:** First, I was the acting director, and then I became the director. That came about because Arthur—originally, the then-current director of the Office of Legislative Affairs went on to a terrific other job, and it was the summer, and Arthur realized he couldn't have a vacancy. So until he hired a real person, he needed somebody to step in, so that was me. I was supposed to just step in.

I have to say, I was probably the least qualified director of the Office of Legislative Affairs the SEC has ever had in its entire history. I came in, and I had a notebook, and I had to literally write down the names of the congressmen and the senators with an R and a D, so that I could memorize what party they were from. This helped me enormously in subsequent months, because everything heated up very quickly. The Glass-Steagall Act had been crumbling and cracking, and threatening to come down for maybe a decade, and all of a sudden it started moving, Gramm-Leach-Bliley, and I was there when Glass-Steagall came down. So I was pretty quickly and so far immersed into the business of getting the SEC's concerns in front of Congress and dealing, in particular, with the Senate Banking Committee, that Arthur made me just the director.

And so, that was an exciting time to be in Legislative Affairs, I have to say. The people who were there were very good as well. There was a guy named Peter Kiernan, who was a deputy, and he had been there for many years. His huge specialty was dealing with congressmen who had constituents who were being investigated by the SEC and they wanted the SEC to back off. And Peter was a master at calling them up and explaining to them why they did not want to be in that situation, if it turned out that their constituent, in fact, was going to be indicted or sued. He was very good at that.

The members of Congress would send in letters that demanded instant response from all corners of the agency, and so at this point in time I became very knowledgeable about everyone in the agency, about what their specialty was. It was a phenomenal staff working at the SEC, and I knew I could talk to any of them and get them to respond and give me the information I needed to hand off to the member of Congress. In particular, the Dingell-grams were long and complex, and needed attention immediately. Consuela Washington was Mr. Dingell's aide, and she was very aggressive in getting the information that she wanted. So that experience was a lot of fun. I learned a lot. I became aware of how the Hill works, and just watching people like Phil Gramm negotiate was just an amazing opportunity. However, I did know that that was not something I wanted to do for the long term.

**WT:** In terms of the balance between just replying to inquiries from Congress, and obviously Gramm-Leach-Bliley, what was the balance in that period, and what occupied your time the most?

**SW:** For me, it started out that the inquiries were the most important thing. However, it quickly became apparent that Glass-Steagall was really, really going to go down, and the SEC had inadequate contacts with the members of the Senate Banking Committee in particular. So that became my job totally, to set up meetings with each member of the Senate Banking Committee, go in there, explain who I was, what the SEC needed, talk to the staff. That consumed me until the end happened, and there was a party to celebrate the signing.

**WT:** What was the position of the SEC in all of this? Because of course it's not the only actor in this. There's the Fed, as well. I was talking to the general counsel in this period last year. It was David Becker, was it?

**SW:** Yes.

**WT:** Yes, that's right. And he said that he was amazed by the amount of antipathy between the banking regulators and the securities regulators. Was that something that you had to deal with?

**SW:** I, quite frankly, was amazed as well, having walked into it naively thinking we were all government employees and there to come up with the best answer for the American public. I remember after many, many days, my days would close out with a long phone call with David Becker, explaining what had happened, where the politics were, what the banking regulators were doing, people working at cross-purposes. Sometimes the banking regulators were not in agreement with each other, because in some respects they competed with each other. It was just a new language for, I think, all of us to learn. I think we were all astounded at the differing positions that could be taken by people who presumably had the same interests at heart.

But it really pointed out the difference between the SEC, which was independent and an enforcement organization. We were a disclosure-oriented part of the federal government who enforced those disclosure obligations by bringing cases. The banking regulators were not. They were into safety and soundness, and, you know, when a bank goes down, it's all conducted very quietly, and one Friday night the doors shut, and Monday morning it opens with someone else's logo on the door. There is continuity, and that's just not the way the federal securities markets operates, not the way the SEC operates. So there was a fundamental difference, I think, in our outlook about how regulations should be imposed.

**WT:** What were the positions of the Commission, and in particular Arthur Levitt, in what they were trying to get out of that legislative process? What was their priority, given the limitations of how they could influence things?

**SW:** You should do this oral history with Arthur Levitt, because Arthur was hands-on involved in all of this. I think the SEC's primary mission in all of it was to continue to have the legislative authority to go after securities issues wherever they cropped up in the securities markets, and not have a door slammed because the misconduct was going to be happening within a bank or a banking entity.

**WT:** So then you were acting director at the Office of Public Affairs. You mentioned to me that that was in August of 2001 that you went there.

**SW:** So, Harvey Pitt was installed in office in August 2001. The outgoing director of the Office of Public Affairs had been a real public affairs person. Harvey comes in in August. It is the slow season in Washington. He knows he needs a real PR person, one with a lot of skills in that area, but there's nobody. He looks around, and he can't find anybody, so he asks me in August 2001 to fill in, just for a few weeks until he gets his feet on the ground and finds a real PR person. So I say, "Sure, Harvey. A few weeks, I can do this. It's slow." And then 9/11 happens, and so I was in the Office of Public Affairs during 9/11, and that, too, was a huge education. John Nester, whom I've already mentioned, he had started out in Office of Investor Education doing the press and the media for Investor Education. But at this point in time, when 9/11 happened, I just brought him over and he has stayed in the Office of Public Affairs at the SEC. He was invaluable. It was so intense.



When they were reopening the New York Stock Exchange, Harvey and Greenspan got on a train, commandeered a train, the first train into the island of Manhattan, and we lost contact with our boss at that point because the phone lines were so down, and so we were watching the television. We kept the televisions on, because they would show snapshots of people and sometimes there would be Harvey. That's how we were trying to keep track of him. But he was there on the platform when the New York Stock Exchange opened, and it was an intense, intense time.

**WT:** What sorts of things did you have to do, being in Public Affairs? What sorts of messages needed to go out, if that's the proper way of framing it?

**SW:** Everyone was terrified that when the markets—well, there was two issues. First of all, we had to get the markets as a whole stopped, an agreement that all the markets would close. And so, that message had to be delivered through the Public Affairs office. I was not the one arranging that. That was Trading and Markets. We called it Market Reg at that point. But that message had to get out and get out clearly. And then, when the markets reopened, we were fielding inquiries as to what happens if the market crashes. Well, we're not going there, because we have confidence in America. You know, that kind of soothing message needed to go out.

We also fielded an awful lot of calls from people in the news media, major news anchors, who would call up, and I would usually field the call or John Nester would field the call, and they would have inside information, purportedly, on who caused the bombings, and it

was really all a plot to do something. And we would have to say, “Oh, yes, sir. Thank you so much.” And so there was a lot of that going on, as well.

**WT:** You’ve never really had a background in communications, but this is a communications position. You just had this liaison position. How was that adjustment for you?

**SW:** Again, I was probably the most least-qualified person to run Public Affairs in the history of the SEC. But again, I had a really good staff, and we made it up as we went along. I will say that my prior careers or offices held in the SEC had given me granular knowledge of who in the SEC did what, and so that helped enormously, because when the phone calls came in, we knew where to direct them. That helped a lot, as well. I was knowledgeable enough about the SEC that that was not a problem at all.

**WT:** Of course, this is also the period in which you have the major corporate scandals, Enron and the rest of them. So tell me a little bit about that experience, being in that office.

**SW:** That, too, was intense and difficult. Enron went down, and then Arthur Andersen went down as well. And there were those who blamed the SEC for Enron, and then blamed the regulators for taking down Arthur Andersen, because a couple of the partners were shredding documents, you understand. And so, Arthur Andersen, as an organization, was indicted and ceased to exist. And so the SEC was buffeted. An awful lot of people didn’t like things the regulator was doing, blamed the SEC for things, and it was a dawning of a new era. The SEC came to be far more in the political eye than it had been before. It had

always been an important player in the federal securities markets, but largely a player that was out of sight of ordinary America. Now it was absolutely dead front in the spotlight of America, and that hasn't stopped. That's just gotten more so.

**WT:** So in terms of what the SEC's response is going to be to all of this, I know that that was something that evolved over time, that in the immediate aftermath of Enron it wasn't clear that you would have something like Sarbanes-Oxley. But then, ultimately, you do, so how do you as a public affairs person respond to people who are wondering what the SEC is going to do in that kind of fluid environment?

**SW:** At that point in time, we were trying to craft the message of the day and to stick by it. But the world was shifting so radically and so unpredictably that it was just a tumultuous time. It was difficult to maintain, to have a story that you could promote, because we were so often being wrong-footed and having to be reactive. And you know, that trend has continued, particularly with the Madoff issues. The SEC has had to be much more reactive than proactive in getting its own message across.

**WT:** Were you still in that position when the legislation went through, or had you already moved to the Office of Investor Education?

**SW:** I had moved back to the Office of Investor Education. So I had become the director of Office of Investor Education right after I left Legislative Affairs. So then I was director

of OIEA at the time that I temporarily was the acting director of Public Affairs, so dual-hatted, and then I went back to Investor Education.

**WT:** Okay, so let's talk, then, about Investor Education. So this obviously had come from your time working with Arthur Levitt, and it was still while he was there, before Harvey Pitt came in, that you then took up that position, I guess.

**SW:** Yes, that's correct. Arthur appointed me director of OIEA, yes.

**WT:** The standard question, how did that opportunity arise, and how was it you that came to occupy that?

**SW:** The former director left for a terrific job, and so the position was empty. From all I had done, and being involved with, in particular, the investor town meetings, I knew that that was a job I would really enjoy a great deal, and so I put my name in the hat. There were interviews, and so I went right from Arthur's office to the head of OIEA. At that point in time, the office had a huge backlog of unresolved investor inquiries. So the office has always had two sides. One is responding to inquiries from the public, complaints and questions, and then the other side is the outreach side, the education side.

And so at the time I got there, there was a huge backlog of unresolved issues that ordinary Americans had phoned or written or e-mailed about, and they had not gotten an answer. And in part, that was because the world was changing, the internet was

happening, and there were no established protocols for responding to an e-mail in the same way that there were with a letter that came in. A letter, you read it, the person drafts a response, sometimes for the signature of a more senior person. The more senior person reads it, approves it, it gets sent out.

Well, how do you do that when the e-mails are coming in, and they're coming in more frequently, and they're usually not as well thought out as a letter because people pop off e-mails? Well, do you have your supervisor review it before you send it? These protocols needed to be established, and this was just a time of change in the world at large, of course, but certainly within the office, because it needed new protocols for how to handle investor complaints. And so we got that turned around. That was a lot of work. The staff was terrific. They came up to the mark, and then we were also able to do an awful lot of really good investor education, which was completely necessary, because as I've said, the internet is here and with it the rise of the self-directed investor.

**WT:** Coming back to the prominence of the SEC, through particularly the corporate scandals of that period, would people be more apt to reach out to the SEC. Or would it be possible to tell, in the aftermath of all of that, knowing that that's the organization that's responsible?

**SW:** The people that were asking questions of the SEC, by and large, they weren't as concerned about these big corporations crumbling. They were concerned about their own money. They'd lost money, or they had a broker and they didn't know whether or not the

fellow was doing the right thing for them. They wanted to know what rights they had. It was very me-specific, person-specific, and so very intense questions would come in. Sometimes we could tell, rather immediately, that the person had been defrauded by either a securities salesperson or by some random person on the internet, and in that case we had to get the matter immediately to Enforcement so that Enforcement could deal with it. But we lived in a bit of a separate world in the complaints area, because the people writing us cared only about their own money.

**WT:** Do you think more people knew about the SEC following those scandals, and therefore, they would go to them more? I guess that's kind of what I'm trying to get at, and it's maybe not possible to tell.

**SW:** I don't know. I do know that the SEC had ramped up its involvement in all forms of investor education through Arthur's tenure, and then Harvey contributed to it as well. So if there was a huge gathering of either investors, or for example the AARP, we were there. We were on the podium, we had a booth, we were talking to people, we were handing out literature. So I think we had ramped up the profile of the investor education, the face of the SEC in a big way, prior to the scandals. I appeared on television a lot. I appeared on radio a lot. So did Gerri Walsh. Gerri Walsh had a weekly show that I think she did for many years. We were out there. We were the face of the SEC for a lot of people.

**WT:** And of course, this is the period when the good times come to their end with the bursting of the tech bubble.

**SW:** It is.

**WT:** Did that reflect itself in the kinds of things that you had to deal with?

**SW:** Absolutely. I mean, there was real pain out there as people lost money. And then, this is also the era where, for example, you had K-Mart going through a restructuring, bankrupt. And so people were loading up on the K stock, because it was pennies on the dollar, because the news media was saying K-Mart is going to emerge from the bankruptcy process. Unfortunately, as you probably know, when you emerge from bankruptcy, the stock that you issue then is different from the stock when you go into bankruptcy. And so the stuff that they were buying at pennies on the dollar was absolutely worthless at the time they bought it. And so when any big company like that would emerge from bankruptcy, our telephone lines would explode. "What do you mean? My broker statement says I've got zero in K." Well, yes, it's the old K. It's not the new K.

And so there were enormous needs for investor education. Pets.com goes belly-up. I mean, it was a difficult time, I think, for American investors, those self-directed investors, the ones who had grabbed on to this idea that they, too, could be just as good as the professionals. This is also the era of the rise in day traders. Day trading was a huge issue. I remember that we went to one conference in a hotel where there was another

conference simultaneously happening, and it was teaching people how to day trade, and it was in Spanish, and the penetration of these day traders into American society was just terrifying to watch.

**WT:** So, day trading is on one end of the spectrum. Of course, mutual funds is the other end of the spectrum. That's obviously a big part of how a lot of people are in the market, so tell me about the place of mutual funds and related things in this.

**SW:** Obviously, mutual funds have been and continue to be a tremendously important device for people to save long-term for their retirement and their kids' education. During this time the SEC was very interested in the disclosures, and we were talking a little bit about the prospectus and disclosures around costs and fees with mutual funds. And so we in OIA got the bright idea that wouldn't it be a great idea if we did some investor testing about these proposed disclosures, which Investment Management had proposed.

We did an awful lot of investor testing. We were very close to real people, as opposed to attorneys, who review disclosures for a living, and so we knew some things going in that I think our colleagues needed to be brought around gently to understanding. For example, "basis points" do not sing to ordinary people. They are not English. They are not real words. So, for example, in 2004, when the SEC puts into place required disclosures in the annual report in dollars for a \$1,000 investment, that was deliberately picked so that if your investment was \$4,000, you could multiply it by four. But the amounts were in dollars, not in basis points, and that was a direct result of investor



testing, which we did throughout this time period. I think it added a lot of value to what the Commission did.

**WT:** In developing things like investor testing, that obviously wouldn't be an in-house capability. What sorts of people would you go through for that sort of thing?

**SW:** We had a couple of battles. First of all, the issue was whether or not we could bring together more than ten people and ask them for input without having to jump through some procedural hoops. That was one battle that the general counsel's office helped us with. Investor testing started out very shaky. We hired an outside organization to do the investor testing. They had two-way mirrors and things like that, and we would give them the parameters. We want one to be done in the Midwest. We want people with some investing experience. We want people who own mutual funds. We want between these ages and those ages. We want a gender mix. We want an ethnic background mix. And they would come up with these focus groups of people. I think they paid them \$25 and gave them lunch or something like that, to get them to participate. And then they would record the results, and from that we would take back to the division and the commissioners the feedback on the various disclosures.

**WT:** I know that it's primarily through investment education that the question of fees becomes so prominent. Could you tell me a little bit about the emphasis on that? Was that traditional? Were there people who were particularly interested in driving home that particular message?

**SW:** It became abundantly obvious to us in Investor Education that ordinary investors had no clue that they were paying their securities salesperson anything for advice, and that they were not clear whether or not they were paying anything to get a mutual fund, and we thought that wasn't a really good situation. Unfortunately, for our legal colleagues, they believed that the disclosure was absolutely adequate, as it probably was, but who reads the disclosure, right? And so we had to do an awful lot of investor testing to prove to our colleagues that people were not understanding these concepts. And I think that is what led to some of this emphasis on, okay, if what we've been doing before doesn't work, what can we do that's better?

And so in 2004, when the SEC went with the disclosure in the annual report, if you have \$1,000, here's what your fees are going to be, that number, they went that direction to have some form of comparability so that people could compare, as well as allow people to have that information in hand before they made the purchase of a mutual fund. Also on the table at the time was personalized account statement disclosure of the fees that you pay. Ultimately, the Commission decided not to go in that direction because the costs of reformatting all of the equipment were deemed to outweigh the benefits that would be enjoyed by doing that. But these were not easy issues. The answers continue to be elusive. But the SEC put a lot of energy at that time period into trying to figure out what might actually communicate with real people.

**WT:** Did the late trading and market timing scandals have any consequences for investor education, or did that remain kind of in the enforcement area?

**SW:** Mainly, that remained in the enforcement area, because in the grand scheme of things individual investors were not, by and large, harmed. The public relations fallout for the mutual fund industry as a whole was a disaster, don't get me wrong. But, on the whole, investors were not disadvantaged, because the amounts at issue for each individual investor were so tiny that it was not an issue.

**WT:** And this is also a period when the complex products derivatives and whatnot start becoming something that's more available. What were some of the issues that you saw with those?

**SW:** People not understanding the products at issue. That's mainly what we in Investor Education were seeing. And more than that, the securities salespeople not understanding the products that they were selling, that too was an issue.

Throughout this time period, I met on probably a quarterly basis with the folks from SIFMA to try and explain to them where our investor complaints were coming from, what areas they should be focusing on, going back to talk to their people. And I believe that that was a really fruitful partnership and sharing of information, because they were able to take our top-ten complaint list and go back and work with their people on how to better the education, frankly, of the securities salespeople.

**WT:** To what degree did you have to target your message to different kinds of investors? So you have the traditional image of the elderly investor who could get defrauded by just about anything, to people who fancy themselves, at least, to be very sophisticated traders. And, of course, you have the question of targeting of products and that sort of thing.

**SW:** Yes. So, we tried to target our messages based exactly on those kinds of demographics. We attended the AARP conventions religiously, talked a lot to AARP chapters to try and touch that base. We went to investor fairs where most of the other people there were peddling get rich quick products, quite frankly. We would go around to other people's booths, and we would take their offering materials, and we would mail them to, for example, the enforcement people at the CFTC, because we knew that there was a problem. CFTC, they did not have a lot of people, so they were not out at these investor fairs.

Actually, those events were a little bit uncomfortable, because we had to ask for a booth that was on the edge. Because we wanted to be as far away from everyone else as humanly possible, because we didn't want our proximity to someone selling a this-will-get-you rich-tomorrow, just follow my program. We did not want our proximity to those people to sort of rub off on them: "Oh look, they're right next-door to the SEC; they must be good."

**WT:** So NASD—or at least the predecessor to what’s now called the FINRA Foundation, comes into the picture, and doing similar sorts of things. I mentioned to you that I spoke to Gerri Walsh, who of course is over there, or at least was when I spoke to her. Is she still?

**SW:** Yes.

**WT:** Did you have much of a relationship with that organization?

**SW:** We worked with the NASD on investor outreach. They would very nicely provide us with a securities professional in every venue we went to. That person was precluded from giving out their business card, and they were to talk education issues, and so that relationship worked well. We didn’t have much to do with the FINRA Foundation. Before the global analyst settlement, it wasn’t a huge deal like it was after it got \$52 million. But we did work with NASD, and they were very gracious about helping us staff those events.

**WT:** So I imagine that this office continued to be well supported throughout your time there under Chairman Donaldson before he left.

**SW:** Absolutely.

**WT:** I don't know if there's anything in particular that we want to talk about in terms of interaction with the Commission, especially the chairman.

**SW:** I served under a lot of chairmen, and they were all supportive, in one way or the other, of investor education. Arthur, Harvey, Bill Donaldson, and then Chris Cox—in particular, Chris was more interested in XBRL, the disclosure language, than some of the others. But all of them were very supportive of Investor Education. I think they all understood how important that was to the SEC's mission.

**WT:** Before you left, you were acting director of the Division of Investment Management. Tell me a little bit about this period. There had been another acting director before you, after Paul Roye had left, if I'm not mistaken.

**SW:** Mike Eisenberg.

**WT:** Right, Mike Eisenberg. So tell me what the situation there was at that time.

**SW:** When I got to the division, it had had an acting director for some time, and Mike had a position as a deputy general counsel in the Office of the General Counsel, as well as being acting director of the Division of Investment Management. I presume that one of the thoughts was it might be better to have someone whose full time job was acting director, as opposed to someone who had two jobs, because there was a lot going on in Investment Management. So I came in, and I knew everyone there because we'd worked

so hard on this investor testing and the disclosure. And they're phenomenal people and so I had a great time there. There's a lot of great people that work in IM.

**WT:** I know it was only several months, but it's a fairly interesting time.

**SW:** Yeah.

**WT:** They'd already put into place the rule about the independent directors.

**SW:** Yes.

**WT:** But the Chamber of Commerce challenge, that was ongoing?

**SW:** Yes, it was.

**WT:** Could you tell me a little bit about what was going on with that while you were there?

**SW:** The staff thought that a fund board would be more able to do its job on behalf of shareholders if the chair was independent, and the staff felt this pretty strongly, and so did the chairman.

**WT:** That's Bill Donaldson.

**SW:** That's Bill Donaldson. The Court of Appeals for the D.C. Circuit struck down the SEC's rule as being insufficiently grounded in the economic analysis. This is really the start of a whole series of setbacks that the SEC experienced, and now you'll see that the SEC has an entire division devoted to economic analysis. So the SEC has changed 100 percent from these days, but in this time period, the SEC had very few economists on staff, and it had never really been asked to do this kind of work before.

So the Chamber came in, and it was very successful. The 75 percent rule and the independent chair rule got struck down. Bill Donaldson was on his way out. This is the summer of 2006-ish—no, '04, maybe. I can't remember the year. At any rate, he was on his way out, and he wanted to get this rule done. He did not want to hand on this open bleeding wound to his successor. So the Commission very quickly reacted to the Court of Appeals decision, and took into consideration a staff report, and then re-adopted the rule. And not unsurprisingly, the D.C. Circuit was not impressed with this and struck it down a second time, so that was a lot going on.

Ironically, even though the rule is struck down, the majority of fund boards did in fact move to an independent chair. So whatever you believe about whether or not the SEC had the data to support what it did, it did make a difference in the fund governance world.

**WT:** I know that Chris Cox and Bill Donaldson held different views on a lot of issues. I'm not sure about this particular one. But with him in as chairman, did that affect some of the things that were ongoing from Bill Donaldson's time there?



**SW:** Yes. Chris Cox was very interested in electronic disclosure of data, and that was a big focus of his, as opposed to shareholder disclosures on paper or transmitted in some fashion to shareholders, and so that was a big change. XBRL, Chris Cox was ahead of his time in a lot of ways, because this XBRL project, he dragged everyone in the industry, in the SEC, just kicking and screaming, and scratching and biting, across the finish line to try and make this happen.

One of the early ways that he wanted to have XBRL put into place was in the mutual fund disclosure context, and so that was one of the original projects that he asked to have happen, and we worked very, very hard on that. But that was a U-turn. That had not been on anybody's radar before Chris Cox walked into the building.

**WT:** Now, XBRL is so that you can bring data from the disclosures and essentially perform analysis with it?

**SW:** Yeah, it's eXtensible Business Reporting Language, I believe it stands for. It is a way of tagging data so that a computer can go in and find things with the same tags and aggregate them, and then compare.

**WT:** And so the other thing, I know that you testified before the Senate Subcommittee on Securities and Investments, that is what it was called?

**SW:** Yes

**WT:** Well, about hedge funds, anyway.

**SW:** Hedge funds, sure.

**WT:** So tell me a little bit about that.

**SW:** Hedge funds were big, as well, an emerging concern, because they were starting to get popular and people were starting to be very interested in this investing vehicle that might make a lot of money. I mean, that was the deal. The word around town was that the hedge funds were the way to make a lot of money, so an awful lot of people wanted into hedge funds. And so some of the disclosure and governance issues were apparent there, and the SEC had not really dealt very much with them.

Well, Chris Cox was keenly aware of this, and Brian Cartwright, his general counsel, was very aware of these issues as well, and so they wanted to make statements there. And so that testimony involves things like disclosure to investors of side pocket letters. The SEC had not really talked about that before, and how important it was to have disclosure in place at hedge funds. And that, too, was new. Hedge funds were forced to register, and so the SEC was getting an awful lot more data in on them, and so that was a whole new battlefield opened at the SEC in terms of things that the staff needed to cover and needed to understand and needed to get on top of.

I gave that testimony. I had been the acting director of the Division of Investment Management, and Buddy Donohue was then put in place as the director of Investment Management. The testimony was scheduled to happen several days after he was sworn in, and he could have given the testimony. But the staff and I had spent so much time preparing for it, and it was such a big lift, that he and I together decided that I would just give the testimony, and I did it under my title of the Director of the Office of Investor Education and Assistance, not IM.

**WT:** And the SEC had done a hedge fund study just before this.

**SW:** Yes, that's correct.

**WT:** So what were some of the conclusions that they had come to as to what they should and should not be involved with, as far as that's concerned? You mentioned hedge fund registration. Of course, there's the advisors issue, which I don't think we've come to.

**SW:** Right, there's the advisors registration issue. I think there was an understanding that hedge funds were going to become much more in the public eye, and there was going to be a great deal more pressure for ordinary people to get into hedge fund and hedge fund-like vehicles. And I think that was a good realization, and it was early, but it was good to have that on your radar. You always want to be sort of a step ahead of the next problem emerging. And so the SEC, I think during this time period, was keenly aware that they

had to get on top of what was happening in hedge funds, the disclosure, to make sure that it was adequate so that existing hedge fund shareholders understood when their investment might be diluted by someone else.

**WT:** Were they at all worried at the time—of course, it easy looking back in retrospect, now that it's a concern—about the systematic importance of hedge funds, the size and importance of them in finance?

**SW:** Well, Long-Term Capital had gone down back when Arthur was in office, and I think that shocked everyone, obviously. But to my knowledge, there was not a huge concern about the systemic importance of hedge funds as a whole, because most of them were not as large as Long-Term Capital.

**WT:** So then you came over here to the Mutual Fund Directors Forum.

**SW:** Yes.

**WT:** You were the first executive director?

**SW:** Yes, I was.

**WT:** So they hadn't had somebody in that sort of position before that?

**SW:** So, Allan and David had been running the organization, and so it was really a one-man band in the initial going. And then they had the great good sense, Allan Mostoff in particular, to hire a Dechert associate named Carolyn McPhillips. And so, with Carolyn in hand—and she’s an attorney, obviously—suddenly, they had someone very smart who could write and could bring the organization to the next level. And then they hired Dave Smith, from the general counsel’s office, to be the general counsel of this new organization.

And so things were going very well, and at that point in time—this is 2006—I had done a lot at the SEC. I was back running Investor Education, which is terrific, a great job, but you know, I was looking for other opportunities, to be honest. I had done a lot at the SEC. And so Allan, in particular, reached out to me, and I had known David obviously, when I was at the SEC, as well—David Ruder, sorry. Well, David Smith, as well—too many Davids. They said that, essentially, they needed someone to run the organization so that Allan could retire, and would I be willing to come over and work with the organization.

So I saw this as a huge opportunity. It was a great group of people. I had an enormous amount of respect for Dave Smith. After meeting Carolyn McPhillips, I realized how smart she was as well, realized how big the opportunity was there for highly effective education targeted only at fund independent directors. And so I came over, intended to stay a year or two, but I haven’t looked back.

**WT:** Tell me about the evolution of the organization. We talked about its early years, and you mentioned that at the time it had been a voluntary organization. How did the structure evolve since that time?

**SW:** The organization, just prior to when it became self-funded, had produced a best practices report at the request of the chairman of the SEC—that must have been Arthur—and it was very well received—this was the 2004-ish time period—it was extremely well written. Then, in the independent chair battle, the organization took a very strong stance supporting independent chairs. At that point in time, the organization was a membership organization run on dues, and so the members felt strongly that an independent chair was the right organizational theory for mutual funds. So that gets struck down by the courts.

**WT:** Let me just interrupt and ask, as far as the membership is concerned, would those be independent directors who choose to become members, or as an independent director do you have to become a member of this organization?

**SW:** No, you don't have to become a member of this organization. The independent directors on a board vote to join the forum, and then dues are assessed based on the size of the assets under management on a yearly basis, and then all of the members of the board and the organization have access to the things that the organization does.

**WT:** So it's on a fund basis, so all the independent directors of a particular fund will be on the board, or not.

**SW:** Yes, that's correct.

**WT:** I see, okay, thank you.

**SW:** So for example, one asset manager may have four boards. They vote to join, and the assets that they sit on are the assets that the dues are assessed on.

So the people joining the forum, particularly in those early years, the self-selected directors were very interested in bettering corporate governance as a whole, and so it was just an outstanding group of independent directors, because they understood how important it was to have good corporate governance and they were passionate about bringing that to the rest of the world. So the organization began focusing on putting out high quality white papers and comment letters, and enhancing our in-person and later webinar education of fund independent directors.

Our theory back then, when I joined, was that if we build it, they will come. That was our theory. We were not really going to worry about the membership. We certainly were not going to go out and bang on doors and ask people to join. We were just going to show them what good things could happen, and if you're part of the forum, you got to have a part in setting the agenda of the organization and helping craft the position papers that the organization would put out the door. And so, even to this day, every position paper the forum issues is first given in draft to our member boards. They have the

opportunity to suggest edits, to enhance, to subtract, to suggest different arguments, and what we put out the door is something that our membership has achieved a consensus on. And that has been just a powerful force in the fund director community, I perceive.

Fund directors, as a whole, they skew older because of the conflicts issue. Many of them have a career under their belt that they have retired from, and now they are in another chapter in their lives, and they're very interested in making a change for good. And so we see that time and time again when we meet with our members. They're very interested in enhancing and bettering corporate governance in the fund industry on behalf of fund shareholders. It's been a lot of fun to watch that evolution.

I think with the market timing scandals in particular, fund boards began to wake up and say, you know, this is something that we need to focus on. There are conflicts of interest here between fund shareholders and management. They're not pervasive, they're not the center of what we do, but they certainly exist, and we need to monitor them and be aware of them. And we need good educational resources out there helping us understand the questions that we need to ask.

**WT:** What sort of positions would independent directors have generally held before they would have moved on to having these positions?

**SW:** An awful lot have been CFOs, CEOs of major corporations. A great many of them have come out of the fund industry, have been a fund treasurer or a CIO of a fund. There's a



big chunk of fund independent directors who are academics in the business school or published in the finance area. It's a very talented group of people, and unlike operating companies, by and large fund independent directors serve on one, possibly two fund boards, or for asset managers. So operating company directors can serve on three or four or five boards, and you run into the issues of over-boarding. How can they possibly pay attention to that many corporate issues? That's not the case in the fund industry. It's just evolved in a different way, and so you have people who are extremely loyal to their shareholders, and wanting to make sure that their shareholders get the best value for the fees that they are paying for the products that they're getting.

**WT:** And just to get a sense of the scale, about how many member boards would there be in the organization?

**SW:** I should have written that down. We drop a footnote in all of our comment letters that say how many fund independent directors we have. It's somewhere on the order of maybe 800 or 900 fund independent directors are members of the organization. Our membership, I will say, has grown every year that I have been here. [After checking the official figures.] We've got just about 900 independent directors representing 122 mutual fund complexes.

**WT:** Okay, terrific. Of course, the trend has been towards increasing responsibilities for independent fund directors.

**SW:** Very much so.

**WT:** So that, I take it, is part of the educational mission, is to tell them how to cope with these responsibilities. What are some of the key issues that you've had to deal with, as far as those are concerned?

**SW:** There is no question that there has been a significant evolution of the role of a fund director, both because of internal events, such as the market-timing scandals, but also regulatory initiatives. Let's just talk about Dodd-Frank for a minute. Dodd-Frank has had an impact of moving fixed-income products largely out of the bank trading desks and largely into mutual funds. And so now the banking regulators, who were behind that getting them off the bank balance sheets, are now concerned about the implications for systemic risk of mutual funds.

And so the SEC has been proposing regulations to seek to cap the potential systemic risk of mutual funds to the global and certainly US economy. In many of those rule initiatives, the SEC's easy way out is to say we've got boots on the ground looking at every single fund: it's called the fund board, the independent directors. Let's get the independent directors to oversee, to approve, to watch out for this particular conflict of interest, and so we're seeing that fund boards are being asked to do an awful lot more than they used to.

Now, partly that is a side effect of the increasing complexity of today's financial markets. There's an awful lot more complex products out there. Fixed income: returns have been low for years, and people, particularly young people looking to retire, would like to have alternative investments that maybe are not correlated with stocks and with bonds. And so that brings you out on to the continuum of risk, and so that brings a whole host of oversight issues, making sure that the policies and procedures are in place so that you've got appropriate liquidity and concentration limits observed, and things like this.

And with the registration of the hedge fund advisers, then, there has been another push for hedge fund advisers who can make two and twenty as a hedge fund and have not seen terrific returns in the past few years. There's been a huge push for those advisers who are now registered to sell their product through the '40 Act wrapper to get into a mutual fund context, because there you have lower fees, sure, but you have sticky assets. You have a lot more investors, potentially, who can invest in your hedge fund or hedge fund-like instrument.

However, moving into the '40 Act arena comes with a whole host of regulatory overlay that is completely absent in the hedge fund area. So, for example, it may be that there are trading restrictions, and you the hedge fund manager cannot invest in a particular product without the approval of your board. Or you have to have in place compliance procedures, and you have to have a CCO, and you have to be watching your liquidity, and you have to have daily NAV struck. This regulatory overlay is, in many cases, new for these hedge fund managers who are moving into the '40 Act area, and so you have directors who are

sitting in a fund complex who have either a fund of alternative investments, or a sleeve of a fund that has some of these ex-hedge fund advisers in it, and it's not just the board. The advisers are in the same place, but the oversight obligations are significant and very challenging.

**WT:** One of the big issues among the novel developments is of course the exchange traded fund. What sorts of issues does an independent director have to deal with in terms of that development?

**SW:** Sure, well, we have an awful lot of ETF complex directors that are members of the forum. Obviously, they've got the same governance obligations as any other '40 Act open-end or closed-end—well, open-end fund. Actually, we have a number of closed-end fund directors, as well. The legal obligations are slightly different there, however. So the underlying structure of the investments is different. With an ETF, obviously, you have baskets of securities, and they're exchange traded, so the structure of the securities and how they operate is fundamentally different than in an open-end fund. But there are similar issues of liquidity and things like that, and adhering to your restrictions in your prospectus, and things like that. And so we have ETF boards, as well as open-end fund boards, that are part of the forum.

**WT:** Well, I think that brings me up through all of the questions that I had, but if there's anything that we've missed that you'd like to talk about, by all means bring it up. No? Well, all right. Very good. I thank you very much for your time.

**SW:** Thanks so much.

[End of interview]