

SEC Historical Society
Statement of Peter J. Romeo
February 20, 2014

In response to a request by the SEC Historical Society to Peter J. Romeo, an SEC official from 1969-84, that he participate in the Society's oral interview program, Mr. Romeo decided instead to provide the following written statement consisting of the information typically included in an oral interview by the Society.

PERSONAL INFORMATION

Family Background

I was born in Darby, Pennsylvania, a suburb of Philadelphia, on August 1, 1942. Both of my parents were children of Italian immigrants, and each had come to Washington in the early 1930s to find jobs during the Great Depression. They met and married there and I was the second of their six children.

My place of birth was due entirely to the SEC. My father had become an employee of the agency soon after it opened its doors in 1934 and was a financial analyst in the Division of Corporation Finance. In early 1942, the government moved the SEC temporarily to the Philadelphia area to make room for the legion of defense workers coming into Washington after Pearl Harbor. The SEC returned to Washington in 1947, at which time my parents settled in Arlington County. I grew up there and have continued to live uninterrupted in northern Virginia, along with my wife and three children.

Education

I attended parochial schools in Arlington and Gonzaga High School in Washington. Gonzaga was a great experience for me, due to the Jesuits who staffed it. They were terrific role models and outstanding educators who instilled in me confidence that I could succeed in the future. I moved on to Georgetown University, where I obtained a B.S.B.A. degree in 1964. My major was accounting, due to my father's insistence that I have a skill upon graduation that would be immediately useful in the working world. It turned out to be a wise choice because I was able to finance the next stage of my education by working year-round as an accountant during the day at a local accounting firm and attending George Washington University's law school at night, where I earned J.D. and LL.M. degrees in 1967 and 1969.

Transition from Accounting to Law

During my final year in law school in 1969, the accounting firm that employed me detailed me during the tax season (January through April) to a small law firm, Reasoner Davis and Vinson, to prepare the income tax returns for the firm's wealthy clients. This was necessary because the lawyer at that firm who prepared the tax returns in previous years had become ill. It was through that connection that I decided to start my legal career at the SEC. Elwood Davis, a founding partner of the firm, persuaded me that my intention to start at the IRS with a view to becoming a tax lawyer (my LL.M. was in taxation) was misplaced. He said that a person who was a CPA and a lawyer as I was should begin by working at the SEC for two or three years because that was the best place for an individual with my credentials to start a successful legal career in the business sector. It was sage advice that worked out well for me.

EARLY YEARS AT SEC

Branch Experience

I began my career at the SEC on June 9, 1969 in one of the 15 branches of the Division of Corporation Finance that focused primarily on disclosure documents of public companies and the issues relating to them. Each branch consisted of a dozen or so professionals (Branch Chief, five or six lawyers, a few financial analysts, and an accountant). It was my good fortune to be assigned to one of the best of the branches. It was headed by Ernestine Zipoy, an accountant by training who combined a sharp intellect with a peppery "can do" personality. Unlike many Branch Chiefs, Ernestine believed in assigning meaningful work to the new members of her branch from the outset, rather than breaking them in gradually with relatively minor tasks. She was aided by a top-flight young Assistant Branch Chief, Howard Morin, a very kind and perceptive person who later became an Associate Director of the Division, as did Ernestine.

Ernestine placed me in an office with a young lawyer my age named Ron Hunt, who had been at the SEC for nine months. Ron was an excellent lawyer with a sly sense of humor who was a star in the making. He later became a legal assistant to the Chairman of the SEC, Secretary of the Commission, and then General Counsel of Sallie Mae by the age of 30. In addition to his legal skills and pleasant personality, Ron was a true southern gentleman who helped me by providing sound practical advice and making available a collection of comment letters issued by the branch on disclosure documents such as registration statements for public offerings, proxy statements, and periodic reports issued by public companies. The collection was a highly useful primer that enabled me to understand quickly the principal areas of concern when reviewing the filings assigned to me for comment. Ernestine and Howard were the reviewers of my work and were very encouraging, notwithstanding the fact that I was "learning by doing."

Proxy Contests

After several months, I came to the attention of Joe Bernstein, one of five Assistant Directors in the Division. Like the others, Joe was responsible for overseeing the work of three branches, one of which was Ernestine's. He was a highly respected veteran of the SEC who was a stickler for detail. From time to time Joe would enlist me to work with him on proxy contests for the election of directors. Proxy contests were high pressure assignments because the missives issued by the competing parties attacking their opponents attracted the attention of the media and required immediate review. The SEC staff essentially served as a referee by reviewing drafts of the missives before they were issued and providing comments intended to prevent the inclusion in them of potentially false or misleading statements.

It became evident after a while that Joe and I had differing philosophies on what might be troublesome in the missives, with Joe generally taking the more harsh view. Finally, I politely asked him why he continued to ask me to work on these matters when we had such divergent views. His answer was "I like to know what the other side is thinking." I took that to mean he did not want a "yes" man and was seeking a counterweight to his own thinking, which impressed me. Although Joe was nearly 30 years older than me and had no hesitation in providing constructive criticism in rather emphatic fashion, we became close friends and stayed in touch until he died several decades later at the age of 90. He was a dedicated employee from the Commission's earliest days in 1934 and a compassionate individual who helped establish the image of the SEC as the "jewel of government agencies" in the first several decades of its existence.

Legal Work

Although the primary responsibility of branch lawyers was to prepare comments on disclosure documents, they also dealt exclusively with legal issues from time to time. These occasions arose principally in the context of requests from the public for no-action or interpretive letters. Both types of letters seek advice on whether the requestor may engage safely in a proposed course of action under specific provisions of the securities laws, although technically the letters are different. An interpretive letter discusses the application of specific statutory provisions or Commission rules to the proposed activities described in the incoming correspondence, while a no-action letter sets forth the staff's position on whether such activities might result in enforcement action, without necessarily discussing the reasoning for that position.

The Office of Chief Counsel ("OCC") of the Division assigned the requests for no-action or interpretive letters to individual branch attorneys for the preparation of draft responses to be issued by attorneys in the OCC. My involvement in the preparation of these responses led to my being invited to join the staff of the OCC, as explained below.

Early in 1971, the OCC received an unprecedented number of requests from public companies for no-action letters that would permit them, pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, to exclude from their annual meeting proxy statements proposals submitted by their security holders. I was one of a half-dozen branch attorneys selected to draft responses on a crash basis to these letters. Shortly after participating in this project, the Chief Counsel, Neal McCoy, a skilled lawyer in his early 30s with a pleasant demeanor who later headed the Washington office of the Skadden Arps law firm, invited me and two other branch attorneys who participated in this project to become members of his office. I was happy to accept because the work in the OCC was exclusively legal and would provide me with a much wider range of legal experience that I could obtain from remaining in a branch.

STAFF ATTORNEY IN OCC

I began working in the OCC in April 1971. At that time the office was composed of the Chief Counsel, two senior attorneys, five younger attorneys, and a legal clerk. All who worked there during my tenure in the office subsequently either retired from the SEC after distinguished careers or moved to the private sector where they flourished either as partners in major law firms or in one instance as a federal district court judge. The office was renowned within the Division for its legal talent, and it was a high honor to be selected to work there.

Nature of Work

The work of the OCC was interesting and challenging, and provided an opportunity to interact with the top management of the Division and highly regarded private practitioners. All of the staff attorneys in the Chief Counsel's office shared three responsibilities:

- Issuing responses to no-action and interpretive letter requests;
- Responding to telephone inquiries from the public (primarily securities lawyers and public companies) regarding the securities laws administered by the Division; and
- Resolving legal issues presented by branch personnel relating to the disclosure documents under review by them.

Some of the attorneys also were assigned primary responsibility for esoteric areas of the law (such as the Trust Indenture Act and shareholder proposals) that were implicated in the Division's work. And, as explained later, some might be assigned special projects, as I often was in the five-year period immediately preceding my becoming Chief Counsel in 1980.

Extraordinary Training Ground

The OCC was a great place for a young lawyer to become proficient quickly in the securities laws administered by the Division. The junior lawyers in the office often had to handle 30-40 telephone inquiries daily in addition to their other responsibilities. Because these inquiries covered the full range of the Division's work and generally involved sophisticated issues of current importance, they required an in-depth knowledge of the Division's forms, rules and regulations, as well as the ability to organize thoughts quickly and express them concisely. A better training ground for a young securities lawyer would be hard to find. There was, however, a danger that the relatively unseasoned status of some of the young attorneys sometimes might result in the issuance of erroneous advice. This became painfully evident to me one day when my former Branch Chief, Ernestine Zipoy, advised me that a response I had given to a caller the previous day surprised her because it overturned a Division position of 40 years standing. I quickly professed my ignorance of that fact and soon after ate humble pie by informing the person who had called me that my view was mistaken.

Special Projects

In 1975 I was promoted to the position of "Chief Interpretive Counsel for Forms, Rules, Regulations and Legislative Matters." As the long title implied, the position covered a broad range of responsibilities. In addition to addressing a variety of interpretive issues presented by the public or the staff, the person holding that position from time to time had to draft Commission releases relating to the adoption or interpretation of rules and forms administered by the Division and prepare responses to Congressional inquiries relating to them.

As Chief Interpretive Counsel, I worked on a variety of special projects that primarily involved (i) shareholder proposals, (ii) Rule 144, (iii) Section 16, (iv) employee benefit plans, and (v) other rulemaking and interpretive initiatives requiring the preparation of releases for issuance by the Commission. Each of these projects is described in the sections which follow.

Shareholder Proposals and Corporate Governance

In the early 1970s, there were only two significant forms of corporate governance available to shareholders of public companies. One was proxy contests, which as previously mentioned involved control controversies. The reality was that only deep-pocket investors could engage in proxy contests because of the high expense involved in trying to change control of a company. The other was shareholder proposals, which any security holder of a public company could submit under Rule 14a-8 for inclusion in the company's proxy statement for an annual or special meeting of its security holders. For a four-year period (1972-75) prior to becoming Chief Interpretive Counsel, I was the person in the Division charged with responding to all letters from public companies arguing that proposals submitted by their security holders could be omitted from their proxy statements because they failed to meet one or more requirements of Rule 14a-8.

At that time, there were 200-300 such letters submitted by companies during each proxy season (generally February through May, when most annual meetings are held). The Division's response was either (i) it would not take any action if the proposal was omitted (the most frequent response), or (ii) the Division did not agree that the reasons advanced by the company provided a valid basis under Rule 14-8 for excluding the proposal. Alan Levenson, who had become Director of the Division in 1970, took a personal interest in these responses because he believed the Division had been too strict in its interpretations of Rule 14a-8 in the past. Alan was a visionary in many ways and certainly was ahead of his time in his view that shareholders should be accorded more rights under Rule 14a-8.

I would meet perhaps once a week during each proxy season with Alan and his closest advisers (Neal McCoy and Dick Rowe, who succeeded Alan as Division Director in 1976 when Alan left the Commission) to discuss the positions to be taken with respect to proposals that raised thorny issues. Innovative ways sometimes were found in these discussions to allow more proposals to be included in proxy statements than had previously been the case. One such method was to allow the proponent of a proposal that was potentially false or misleading in relatively minor respects to revise the proposal to eliminate the concerns raised by the company. Previously, no "second bite at the apple" was permitted to proponents in these situations. Another was to create an informal exception to the provision that allowed proposals relating to a company's ordinary business operations to be excluded from the company's proxy materials. If the proposal was deemed to involve a matter of significant public policy interest, the Division expressed the view that the "ordinary business operations" provision did not apply.

One proponent was particularly notable in my experience under Rule 14a-8. Each year he submitted 21 or more proposals to a single public company. On each occasion, the Division invariably agreed with the company in lengthy letters prepared by me that each proposal could be excluded by the company. In most instances it was because the proposals were so poorly written that it was difficult to discern precisely what action was being proposed by them. The proponent's excessive use of the rule eventually resulted in a limit in the rule of one proposal per security holder.

A sidelight to my experience with this proponent was the receipt, after several years, of a nasty letter from him accusing me of being a tool of the company and unfairly depriving him of his right to have his proposals included in the company's proxy statement. In response, I drafted a sharply worded, impolite letter. Before I could put it in the box for outgoing mail, a branch attorney known for his outspoken, bohemian approach to life and occasional antipathy to members of the public happened to drop by my office. I showed my draft response to him and asked for his thoughts. He quickly said "don't send it." I took his advice and sent a bland response instead, thinking that if a non-conformist like this lawyer felt the letter was inappropriate, it surely was. Sometimes we are saved from having our emotions override sound judgment, and this was one of those times.

Rule 144

When I arrived at the Commission in 1969, the legal staff of the Division annually received 3,000-5,000 requests for no-action letters to sell “restricted stock.” This type of stock could not be readily resold under the Securities Act of 1933 because it was acquired in an unregistered private transaction from the issuer or one of its control persons (i.e., an affiliate). The Act, however, provided an avenue for relief in Section 4(1) (now Section 4(a)(1)) for unregistered sales of restricted stock if the seller was not an “underwriter” (i.e., a person who bought stock from the issuer or an affiliate with a view to distributing it to the public, or an affiliate who sold stock for the issuer’s benefit).

The staff of the OCC generally took the position that a holder of restricted stock could sell restricted stock publicly without being deemed an underwriter if the stock had been held for three years because a holding period of that length demonstrated that the person had bought the stock with a view to investment rather than distribution. Holders of restricted stock who had a holding period of less than three years, however, generally were advised by their brokers that they could sell their stock publicly only if the SEC staff issued a no-action letter agreeing that “unforeseen circumstances” (such as health problems or economic hardship) had arisen since their purchase that necessitated a sale before the three-year period had elapsed. This led to a continuing flood of no-action letter requests to the SEC staff, which was required to decide what constituted reasonable “unforeseen circumstances.” These determinations were difficult to make and generally were subjective.

Alan Levenson and his cohorts in the Division’s front office devised Rule 144 to resolve the uncertainty regarding the circumstances under which restricted stock (and stock held by affiliates) could be resold without registration on the ground the seller was not an underwriter. The rule became effective in 1972 and provided a “safe harbor” from registration if the objective standards of the rule (including a two-year holding period) for selling such stock were satisfied. The rule is one of the most successful ever adopted by the SEC, providing certainty where none previously existed and eliminating the need for the thousands of no-action letter requests submitted annually. The rule soon was followed by several others devised during Alan Levenson’s period as Division Director that similarly provided a “safe harbor” from the registration requirements of the 1933 Act for the sale of securities acquired in mergers (Rule 145), private offerings (Rule 146) and intrastate offerings (Rule 147).

Rule 144 was labeled as an “experiment” when it was adopted because the Commission was not sure whether its standards were too strict or too lax. The experimental nature of the rule became evident when the Commission gradually reduced the requirements of the rule on several occasions, with the holding period requirement currently set at six months for stock of publicly reporting companies. One of my duties in the late 1970s was to draft the first two Commission releases that began the relaxation process and to be the primary drafter of a Commission release in 1979 that provided many helpful interpretations of Rule 144.

Section 16

I probably am best known for the books and other publications that Alan Dye and I have co-authored regarding Section 16 of the 1934 Act. Section 16 imposes reporting obligations and trading restrictions on officers, directors and ten percent owners of public companies. My first significant involvement with Section 16 occurred in 1976 when I drafted Commission releases amending Rule 16b-3, the major rule adopted by the Commission under that provision. I later was involved in the issuance while I was Chief Counsel of a lengthy interpretive release on Section 16, as discussed later.

Employee Benefit Plans

In 1979 the Supreme Court issued a decision in *International Brotherhood of Teamsters v. Daniel* that rejected a contention by a retired member of the teamsters' union that he had a right under the securities laws to obtain redress from the union for its denial of benefits to him under its employee benefit plan. The union's denial was based on its position that even though the plaintiff had worked more than 30 years as a member of the union he did not meet the 30-year vesting requirement of the plan due to an involuntary four-month layoff at the 25-year point that eliminated those 25 years from consideration in meeting the vesting requirement.

The Court's decision was based primarily on its view that the tax laws and ERISA provided adequate regulation of employee benefit plans, so further regulation under the securities laws was not justified. It was my task to draft a lengthy interpretive release explaining the extent to which the securities laws continued to apply to employee benefit plans after the decision. This was my most difficult assignment during my 15 years at the Commission. It resulted in a release (No. 33-6180 issued in 1980) that provided a template for the regulation by the Commission of employee benefit plans that continues to be applied today in essentially the form stated in that release and in a supplemental release drafted by me (No. 33-6281 issued in 1981).

Other Commission Releases

During my tenure as Chief Interpretive Counsel, I drafted 30 Commission releases relating to a variety of matters. I also responded on a daily basis to numerous telephone inquiries regarding the releases I had drafted because I was listed on them as the contact person. A frequent caller was Jesse Brill, the Assistant General Counsel of a large brokerage firm. I later learned that many of my comments in response to Mr. Brill's questions were described in a popular newsletter (*The Corporate Counsel*) which Mr. Brill had begun publishing in the mid-1970s. Several months after I left the Commission in 1984 to join the Hogan & Hartson law firm Mr. Brill requested permission to publish a lengthy outline on Section 16 that I had co-authored. This led eventually to a contract to prepare other Section 16 publications.

CHIEF COUNSEL OF DIVISION

I was appointed as Chief Counsel of the Division after the retirement in January 1980 of my predecessor, John (“Jack”) Heneghan, a longtime member of the OCC who became Chief Counsel in 1973 when Neal McCoy moved up to the position of Associate Director of the Division. The Division Director responsible for my appointment was Ed Greene, an outstanding New York lawyer who was the first person to serve as Director of the Division without any prior experience in it. (Ed also has the distinction of being the only Division Director who later served as General Counsel of the Commission.) Ed was a dynamic individual with an incisive legal mind who had begun his tenure in 1979 by establishing several committees composed of Division employees to evaluate various aspects of the Division’s work and recommend changes. I served on one of those committees, which resulted in the publication of a release that, among other things, relaxed various requirements that our committee believed were either outdated or unduly burdensome. My involvement in that committee, as well as my work on the lengthy interpretive releases in 1979 on Rule 144 and employee benefit plans that had been well-received by the public, likely had considerable influence on Ed’s decision to elevate me to Chief Counsel.

General Approach to My Duties

After having served for nine years in the OCC as one of the staff attorneys in the office, I had developed some thoughts about what might be done to enhance its operation. From an interpretive perspective, I thought that some of the positions the Division had taken were unduly restrictive. For example, I believed the “doctrine” of integration of unregistered offerings of securities with nearly contemporaneous registered offerings historically had been applied too strictly, so I sought to narrow its application. I also felt that it would be worthwhile to provide guidance regarding the interpretive focus of the Division in areas of particular importance (such as Section 16) by issuing comprehensive interpretive releases.

From a personnel perspective, I made some key changes. One of these involved the advancement of Bill Morley, an excellent attorney who combined a practical mind with a very pleasant personality, to the position as my chief assistant. I also brought into the office a number of outstanding young branch attorneys. Two of these, David Martin and Alan Dye, were particularly notable. They both are brilliant lawyers who later became partners of mine at Hogan & Hartson and achieved major success and recognition. David subsequently served as Director of the Division of Corporation Finance for a number of years and Alan is widely known for his publications relating to Section 16 and his work in the field of corporate governance.

Operation of the OCC

The OCC had always been a smooth functioning office and I tried not to do anything that would disrupt its traditional method of operation. I reviewed all no-action and interpretive letters

before they were issued, addressed novel issues presented by OCC attorneys and branch personnel, interacted with the Division of Enforcement and the Office of General Counsel on matters of mutual interest, and provided input on important legal matters in which the front office of the Division (i.e., the Director and Associate Directors) had an interest.

The Directors of the Division during the period I was Chief Counsel were Ed Greene, Lee Spencer and John Huber. All were uniformly sound on policy issues and became prominent partners of major law firms after leaving the Commission. Together with the Associate Directors who were my immediate superiors, John (“Jack”) Shinkle and his successor, Linda Quinn, they generally allowed me to conduct the operations of the OCC without undue interference. Linda later served with distinction as Director of the Division for over a decade.

Linda had a reputation as a micromanager, which seemed consistent with her order shortly after assuming oversight of my office that I provide her with a report each month of significant developments in my office. It turned out, however, that she did not micromanage my office. I believe this was due primarily to an incident described below that occurred soon after she became my immediate superior.

A friend of mine in the front office of the Division alerted me to Linda’s intention to visit me within the next half-hour to ask whether a post-effective amendment to a 1933 Act registration statement that currently was effective could continue to be used after a new amendment had been filed but not yet become effective. This unusual question apparently was intended to serve as a test of my knowledge of the intricacies of the 1933 Act. I was confident the answer was “yes” but quickly looked to see if the issue was addressed in Professor Louis Loss’s treatise on “Securities Regulation.” It was, so when Linda casually raised the question in her visit and suggested the answer was “no”, I quickly responded by saying that was incorrect because the legislative history of the 1933 Act contained a specific statement to the contrary. I believe she was quite surprised by the firmness of my response and perhaps impressed by my reference to an obscure part of the legislative history. That response, coupled with the absence of any controversy over the operation of my office, may have contributed to Linda directing her attention primarily to the area of her primary interest, the world of mergers and acquisitions, that was handled by the Office of Tender Offers (now the Office of Mergers and Acquisitions).

Shareholder Proposals

A continuing area of concern within the Division was shareholder proposals. They were the only realistic method by which rank and file security holders could get corporate managements to pay attention to their concerns. The Division recognized this and sought to administer the rule in ways that made it more useful to security holders. Bill Morley, my top assistant, took charge of this area and in addition to overseeing the preparation of all responses to company letters seeking to omit shareholder proposals, he helped formulate amendments to Rule 14a-8 that enhanced its usefulness.

Section 16

Because Section 16 requires corporate insiders to report transactions by them in their company's equity securities and exposes them to liability for any profits realized by them from any purchase and sale of these securities within less than six months, compliance with its requirements is a major priority for the insiders and their advisers. There are over one thousand court decisions involving Section 16 and perhaps even more interpretive letters relating to it issued by the Division. Jack Shinkle, the Associate Director who had oversight of the OCC when I became Chief Counsel, thought it would be worthwhile to provide guidance on this arcane area of the law by addressing recurring issues under it in a comprehensive interpretive release. Two of the attorneys in my office, Bill Toomey and Mike Kargula, worked together in researching and drafting the release, and Jack Shinkle personally involved himself in the project. The resulting release (No. 34-18114 issued in 1981) was warmly received by the public and continues to be a prime reference source on the matters discussed in it.

Telephone Interpretations Manual

Linda Quinn made an innovative suggestion soon after becoming my superior that the staff of my office summarize in writing significant interpretations issued in response to telephone inquiries. These interpretations eventually were organized in a "Telephone Interpretations Manual" made available to all of the professional staff of the Division. Later, this manual, as supplemented with additional interpretations over time, was made available to the public, where it served as an often-cited reference source by lawyers and other members of the public when dealing with issues arising under the securities laws administered by the Division. In 2007, the Division replaced the Telephone Interpretations Manual with its *Compliance and Disclosure Interpretations*, which is a more flexible method of conveying the interpretive views of the Division to the public.

DEPARTURE FROM SEC

I left the SEC on April 27, 1984 after nearly 15 years of service to become a partner of Hogan & Hartson (now known as Hogan Lovells after a combination with another law firm in 2010). Although I had thought I would be a career employee of the SEC, as my father was, I was dissuaded from that course by Howard Flack, a former colleague of mine at the SEC who was a partner of Hogan & Hartson.

I was not looking to leave the Commission when Howard recruited me in April 1984, but I had become somewhat dissatisfied by the fact that I was spending increasingly more time on administrative and personnel matters rather than legal matters. And I was feeling a financial pinch as a result of the double-edged sword of no significant increase in government salaries

during the Carter and early Reagan years and the recent loss of my wife's income as a result of a joint decision that she interrupt her teaching career to devote full time to our three young children. So I was vulnerable to Howard's pitch to move to the Hogan firm, which turned out to be a wise career decision for me. The Hogan firm not only paid me well and provided a pleasant environment for work, but perhaps more importantly allowed me to devote a significant portion of my time to doing what I enjoy most -- writing books and other publications on the securities laws.

Although I have been fortunate to have worked for fine organizations in every stage of my career, I view my time at the SEC as the most pleasant and enjoyable of my work experiences. I am among those alums of the agency who share the sentiment that if a person has to work, there is no better place than the SEC.

Peter J. Romeo
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