

**Securities and Exchange Commission Historical Society**  
**Interview with Charles Cox**  
**Conducted on May 14, 2013 by Robert Colby**

**RC:** This is an interview with Charles Cox for the SEC Historical Society's virtual museum and archive of the history of financial regulation. Today is May 14, 2013. I'm Robert Colby. Today's interview is taking place in the offices of Compass Lexecon in Chicago, Illinois. Mr. Cox, thank you for being with us today.

**CC:** You're welcome. I look forward to our discussion. It will return me to some times that I haven't thought about in that much depth. Let's see what develops.

**RC:** I understand that you are originally from Missoula, Montana.

**CC:** That's correct, born May 8, 1945. I had a happy childhood and grew up in Missoula.

**RC:** Did you have any interest in economics growing up?

**CC:** None whatsoever. I didn't really know anything about the field of economics as a social science until I took a course as a sophomore in college at the University of Washington in Seattle.

**RC:** What was it that drew you to it?

**CC:** Actually it was a requirement for business students. I can remember being teased by a friend saying, “Who did you get for economics?” I told him, and he said, “Oh, man, you’re going to work your rear end off and you won’t get any higher than a C.” I said, “I bet I will.” As a matter of fact, I was enchanted by the course. One thing led to another and I ended up switching out of majoring in business and majored in economics. It was simply part of the studies I’d undertaken. “Okay, time to take economics.” I did but it changed my entire career.

**RC:** What was it that fascinated you about it?

**CC:** For one, it would be the professor who taught the course. He was well known on campus; his name was Henry Buechel. At the time, it was a combination of the subject matter, which I really found interesting, and the presentation by Professor Buechel. At the time, I thought that Buechel had the answer to all social problems, that if there was any unemployment, you just jack up government spending a little. If there was any inflation, you just cut back on government spending. He would invent very simple models and so forth. Later, I found out that things were a lot more complicated than presented in that course. I was hooked. I couldn’t get enough of economics.

That I think is the combination of Buechel, who, as it turned out, was the advisor to undergraduates majoring in economics, so he continued to have an influence on me. One thing I remember in particular: he would look over the courses that you proposed taking for the next quarter. Any that he viewed as a waste of time, like being too easy, being

ones that were well known around campus as an easy high grade, he'd say, "You're not taking that. Put something else in here." (Laughter.)

That was really valuable. I liked it. I explored fields that I had never thought about, for example, some courses in English department. Probably I would not have gone there if it weren't for a gentle push—philosophy courses, certain courses in science. I would say that not only did I learn about economics, but the path I followed and the influence of Professor Buechel got me to learn how the world works, as I would term it, as opposed to being fairly narrow in my interests and mainly looking at it as ticking off requirements for a degree.

Also, as an undergraduate, I came under the influence of a number of other professors who, to this day, I value their influence on me; for example, two Judy Thornton and Yoram Barzel. I noticed last year in a newsletter from the economics department that they were recognized for being professors there for fifty years. As a matter of fact, I saw them last summer. It was my pleasure to once again tell them that I appreciated their influence. I would say that it was those developments and I think that the economics department was a good place to be at that time for an undergraduate. Certainly for me personally, just everything about it, I have nothing but good memories and value the education I got there.

**RC:** Did any of them specifically encourage you to pursue advanced education in economics?

**CC:** I think it was more my decision. I liked the idea of continuing to explore economic problems the way I had as an undergraduate and thought graduate studies would be even more interesting, but they were certainly supportive. I don't think that anybody took me aside and said, "You should go to graduate school." It was that more as I expressed an interest they certainly had good things to say and encouraged me to go ahead. They were supportive, but they didn't cause me to follow that path.

**RC:** How did you end up at the University of Chicago?

**CC:** I think by the time that I was doing my applications to graduate school I had pretty much decided that I was interested in the kind of mix of theory and empirical work that was emphasized at the University of Chicago. I was interested in some of the professors that were there. That doesn't mean that I didn't cast a wider net, but overall, when I got my offers and sorted through them and thought hard about it, I decided that the University of Chicago was the place for me. I got a good offer, but I got good offers elsewhere. The total mix led me to select the University of Chicago. I was always happy that I did. I had a great time as a graduate student.

**RC:** Were there particular things that you wanted to explore?

**CC:** I was very interested in the area of industrial organization and the overlapping area of law and economics, as I had come to experience that in a somewhat limited way as an undergraduate. That in particular was an attraction at the University of Chicago. My

ideas that that would be a place to explore it were satisfied. That was important at Chicago at the time. I got plenty of training in that area.

**RC:** Did you work primarily with George Stigler or did you work with other people as well?

**CC:** George Stigler was the adviser for my dissertation. I had had the idea of taking courses from him and also pursuing studies with him. There were other people on my dissertation committee for example, Lester Telser and Reuben Kessel, both of whose input I appreciated very much. Of course there was a real line-up of what I think as economic stars at University of Chicago at that time. I took courses in, for example, economic history from Robert Fogel. I took courses in monetary economics from Milton Friedman. There was continually something very interesting to study, to pursue. In one sense, it's the graduate student period of my life where I had very few responsibilities other than to do exactly what I wanted and study just what I wanted. It was a very happy time.

**RC:** How did you choose your dissertation field?

**CC:** Searching around, I guess like a lot of graduate students, you're kind of thinking, "What will my topic be?" I had a couple that were false starts. They weren't really going anywhere, but then I said, "You know, I'm interested in financial markets. I'm interested in law and economics." I had always been fascinated by the idea of futures trading, probably because it seemed kind of esoteric and, "What goes on with this?" It is kind of

a financial area. I thought about exploring a research topic there. I became interested in why there was futures trading in certain products and wasn't in certain others. That's not the topic that I explored, but I narrowed it down because I also became interested when I found out that there had been legislation passed that prohibited futures trading in onions.

I thought, "There're a number of agricultural products in which there's futures trading, regulated futures trading, but why a ban on futures trading in onions?" That's kind of what got me started thinking about this and the idea of certain claims that were made about the effect of futures trading on the spot prices for commodities. Keep in mind that what I studied was mainly futures trading in commodities. Futures trading in financial products hadn't really developed to the stage where that's the main show in futures trading now. I found a data set on spot prices that I thought would be useful.

It all kind of came together. One of the main claims was that futures trading destabilized spot prices, but on the other hand, we know that information is important to financial markets. Doesn't futures trading help with price discovery and provide more information? I was studying the effects of futures trading and market information through the behavior of spot prices. That is what was in my dissertation. It combined areas. I was interested in learning more about futures trading. I was interested in applying some of the ideas or techniques of law and economics to that area. There it was. That was the dissertation I pursued.

**RC:** Law and economics was an emerging field at this point.

**CC:** It was. It had been around for a while, but really the development I think was beginning to gain momentum, especially at the University of Chicago. I attended a weekly seminar that was mainly in that area, although I believe it was the industrial organization workshop. It was this expansion of movement into the area of law and economics. You would see people who are the major names, or at least recognized as past major names now, attending regularly. Again, another happy circumstance of my time as a graduate student at the University of Chicago.

**RC:** You finish your dissertation. How did you come to be at Ohio State then?

**CC:** Just the job search process. I would say that all things considered, it was the best offer that I got. So off I went to Ohio State. There were some friends there that I knew. That, too, turned out to be a good experience.

**RC:** Did you find yourself mostly teaching undergraduates there or working with graduate students or a combination?

**CC:** I taught both at the graduate and undergraduate level, both theory and some of the more applied areas. I taught courses in price theory I think. It's often called microeconomics now. I taught introductory economics to large classes and small classes. I taught courses in banking and financial markets. I taught some honors courses. There was a mix, as I said, both at the graduate and undergraduate level.

Again, since you've asked, I think that one thing, was I hadn't done any teaching at the University of Chicago. At a lot of universities, the graduate students are teaching assistants or actually teach some of the courses. At the time at Chicago, there were no teaching assistants. It was a new experience for me preparing courses and interacting with the students. That I appreciated both from the graduate level and what they brought to their interest in the field, and the undergraduate level, which of course had a wider mix of people. There were a lot of reasons why they might be in a course.

**RC:** Where there things that you particularly enjoyed about it?

**CC:** There were. I enjoyed especially people who begin to see the world as an economist and were as intrigued by it as I had been as an undergraduate. Now of course, in a large university like Ohio State, there's sort of a normal distribution of students. A lot of them are there simply because it's a requirement. A lot of them would be in an economics class and maybe they hadn't realized about the way of economic thinking or some of the insights. To see them learn this or begin applying it on their own was particularly satisfying.

**RC:** You were there for eight years?

**CC:** About that, I believe.



**RC:** Then how did you go from there to Texas A&M?

**CC:** There are a number of reasons, but one of the prime ones that I would point to is that there in the business school, and in the management department in particular, there was a group of economists developing a law and economics program.

**RC:** That's at Texas A&M?

**CC:** Yes, developing law and economics. It was kind of surprising. It was in the business school, but I found that attractive, an opportunity to experience a place that I had never had any experience with. I had never even been to Texas before I visited Texas A&M. This set of courses, and it was both at the graduate and undergraduate level, which I don't think it was called law and economics, but that's really what it was. In addition, Texas A&M made me an offer that would be hard to refuse. I moved on to Texas.

**RC:** Was there a conscious attempt to get law and economics grouped together at Texas A&M or did it just sort of congeal?

**CC:** I think that there was the idea, particularly by one of the members of this group, Gerry Keim, that it would be useful for business students to understand the law and economics approach and to ask hard questions about regulation, to realize what it is, how important it is to businesses, to industries, why some regulations develop as they do, what the forces are. In other words, it's not just a parameter that's given, but there are actually

reasons why regulations develop in one particular way rather than another. I believe that this was the idea going on at the time. It was an attractive area in which to work.

**RC:** You found yourself teaching in the business school. Was that different than teaching standard economics?

**CC:** Not really. I'd say that the breadth of what I taught was narrower because it was really more the law and economics, but aside from that, again kind of a normal distribution of students, some who are really interested in matters related to economics, some who couldn't have cared less.

**RC:** You were there for a couple of years. How did you make the jump from there to the SEC?

**CC:** That's an interesting question. Actually, I was at a program. I believe it was called "Law for Economists." The telephone in my room rang, I answered. It was the assistant to the chairman of the SEC, who had tracked me down at this conference and asked if I were interested in considering the job of chief economist at the SEC. I said, "Well, I would certainly be interested in talking about it more. Why don't we do that?" One thing led to another, and eventually I was the chief economist at the SEC.

**RC:** Had you ever met Chairman Shad before?

**CC:** No, I had not. The way it panned out was we made a date for me to go to Washington, D.C. and to talk to people at the SEC. I remember that it was a fairly short meeting with Chairman Shad, but I also talked to a number of other people perhaps at the level of division director, at least one commissioner, perhaps more than that, but a number of people. I spent the day interviewing there. When I was done, I thanked the people who had handled me and went back to Texas with the idea this was interesting, but I was unsure that I wanted to pursue it.

Then maybe a couple of weeks later I got a call and said, “Would you be willing to spend Saturday the such and such in New York with Chairman Shad?” I thought, “All right.” We spent the day together drinking iced tea and talking about a tremendous variety of things. I guess that’s really what finally convinced me to go there—just the ideas that we had that we exchanged about the possible role that economics could play at the SEC, what role it was playing, what his vision was. That’s how that developed.

**RC:** I’d be interested to hear what role it was playing at the SEC.

**CC:** There was a group and I believe it was called the Directorate of Economic and Policy Analysis. They didn’t really apply the latest techniques in economics, financial economics. Chairman Shad was interested in having a chief economist, an Office of the Chief Economist where we would focus on bringing some of the current thinking of financial economics to issues that the Commission was dealing with, both in the area of proposed rules or the functioning of rules that were in place and various topics related to

financial markets that were of interest to the Commission. As he saw it, it would pump up the level of economics at the SEC.

**RC:** Would you say it was supposed to bring an extra level of thought to rules before they went out?

**CC:** I think that was the view because remember, there maybe five economists and how many hundreds of attorneys. That was the situation. It was basically a regulatory agency whose purpose was interpreting and enforcing the Federal Securities Laws. That was done mainly by attorneys. The idea was to have some input from economists. That was my job as I went there as chief economist.

**RC:** Were there particular things that Chairman Shad saw on the horizon that he thought would need economic analysis applied to them or was this just something he thought was lacking?

**CC:** I think it was more the latter. He thought it would be useful to have this input and to be developing it. It wasn't going to appear full-blown and be a major part of the Commission, but to kind of nurture it and see where it fit in and what it could contribute, which is what I attempted to do as chief economist, both by attracting some people to come work there and by attempting to make some contribution.

I think one of the areas that we began with in the Office of the Chief Economist was the topic of shelf registration, which the idea was to expand its availability for issuers. There the idea was could we do any studies, could we do anything that would contribute to this rulemaking process? We began to work on that and had some contributions. There was a pilot program and what the effects of the pilot program had been was one of the first tasks that we tackled.

**RC:** The Office of the Chief Economist is a new entity at this point.

**CC:** At the time, yes.

**RC:** Did you have to set protocols for how it was going to work?

**CC:** Yes. You're probably sounding a little more formal than it actually was. It was finding economists that were interested in coming to work there. It was finding a way to get in on the process of which I must say that it wasn't really the most welcome of environments. Perhaps that's typical of any organization when you've got a division that is preparing a rule or operates a certain way and has some newcomer say, "Well, let me give you some suggestions on that." I'm sure they said, "We don't want your suggestions."

There was some of that, but there was also working with the economists, especially where people in the operating division saw that it could be useful to what they were

doing. I don't want to make that seem more serious than it was, but it's just the way an organization works. As this little operation with some people who might have had some different ideas, you kind of have to balance off and become accepted while you're making a contribution, all of it an interesting educational process for me.

**RC:** Did you have your input into the process primarily through studies or was it more informal?

**CC:** Some of both. I viewed it as mainly studies. Again, we may have been consulted for an opinion, but it was mainly could we bring empirical evidence to bear on a topic, like how shelf registration was working, for example. It was more formal in the writing a study and having that be part of what the commissioners considered before making a decision.

**RC:** They weren't coming to you and saying, "Give us your best guess on what effect you think this will have?"

**CC:** No, not really. There may have been some times. I can remember being in discussions with someone who had perhaps come to see the chairman. This was just a back and forth, but more like a discussion where as chief economist, I might have been bringing in some sort of the economist's view. It wasn't a lot of talking to commissioners and giving best guesses. That would have been a small, if any, part of what I did.

**RC:** We talked a little bit about shelf registration. What were some of the other issues that you studied while you were in the economist's office?

**CC:** What was important at the time was the idea of tender offers, corporate takeovers, the market for corporate control, which is an area that had been generating a lot of research in financial economics and was also generating a lot of interest at the SEC. Because if you go back to this time, 1983, 1982, there would have been some of the high profile corporate takeover, hostile takeovers. It was generating a lot of interest in the business community, and in the political arena. That was an area in which the SEC was getting more and more issues coming up related to tender offers, and the Commission's authority, the effects of tender offers. That was an area also that was developing in which we began to do some work.

**RC:** You said that it was generating a lot of research at the time. Had it been well studied before the early eighties?

**CC:** I don't think so. Let me detour a little bit. What was going on is that methods of financing were becoming available that hadn't been widely available in the past. It was making it possible for a person to finance a hostile takeover that wouldn't have been possible before. What I'm talking about here is the whole area of high yield bonds or in popular terminology, junk bonds. You had various entrepreneurs making these offers for a company. This was raising questions that was this beneficial, was it beneficial for shareholders? Was it beneficial for the company or was it detrimental? A company that

for which a hostile offer was made viewed this as a very threatening thing. The whole management team could have been thrown out by it.

There were questions of, “You have to do something to stop this,” while there were also views that it was beneficial, that it was allowing opportunities for corporate control that hadn’t been available before, but that would have been beneficial to shareholders, beneficial for the use of resources. This is what was going on at the time. The Commission was playing a part in it.

There was activity or thoughts about this, both at the Congressional level and the regulatory level. Part of that would have gotten to the Tender Offer Advisory Committee, which the SEC put together. That was the situation at the time. I think where I diverged was where you asked had it been studied, had the market for corporate control been thoroughly studied prior to the eighties? I think there had been some studies, but it wasn’t really a hot topic because there wasn’t that much activity in the market for corporate control.

**RC:** How did you go about studying it?

**CC:** Remember, we were still pretty small. The Office of the Chief Economist, I was recruiting people. I was overseeing some studies. I think that one area that we participated in, in a support way and not as directing it, but was this Tender Offer Advisory Committee. That was one of the main areas.



**RC:** Can you tell me a little more about the advisory committee?

**CC:** It wasn't really something that the chief economist or the Office of the Chief Economist was directing. It was more put together by the commissioners; remember I said we played a support role. The fact was that it drew interest from the financial community, the business community, academics. It was these kinds of things, putting together this advisory committee and tackling a whole list of the questions that had been facing the Commission was one of the ways that it was studied. I'm not claiming that this was the Office of the Chief Economist's study of it. We couldn't have done that with three, five people, something like that because it was a bigger operation than that. With the general support of the Commission staff, this group was put together. They began working through various questions.

**RC:** The advisory committee ended up putting out a great many recommendations. By that point, you're on the Commission. You had to deal with the fallout from the committee.

**CC:** That's correct. By the time that the results of the advisory committee became available; I was a commissioner rather than the chief economist.

**RC:** How did you become a commissioner?

**CC:** I got a phone call one day. It was someone from the White House Office of Presidential Personnel. They said, “Would you please come over and have lunch?” Sure. That sounded pretty interesting. I did. During lunch, I was asked, “Would you be interested in being one of the commissioners?” I remember thinking, “Yes, I was. I think I could do a better job than some who were currently commissioners.” That was the start of a long path that eventually led to me being nominated by the President, eventually confirmed by the Senate.

**RC:** How did the view differ from being a commissioner as compared to being chief economist?

**CC:** As a commissioner, I was involved in everything. As chief economist, it was pretty narrow to designing research projects and manning those projects. As a commissioner, you were making decisions based on the input of the staff and sifting through both the legal, and to the extent that there was some, economic information. It was much more of an overview of everything that the Commission was doing as opposed to simply the financial economics approach.

**RC:** As you said, the issues are much broader when you’re a commissioner. You’re dealing with the same issues, just more of them.

**CC:** Yes, but you’ve got to realize that as chief economist and as developing the Office of the Chief Economist, and I’ve mentioned how it was a very small operation at the time, you

had the luxury to focus. You couldn't focus on everything. You have to focus on everything as commissioner. There are decisions to be made. The world moves on. You can't say, "Well I would really like to study this at greater length." There comes a time you're making a decision with the best information you have.

**RC:** When you step up to being commissioner, what were some of the major issues that you're facing? We talked a little bit about the tender offers.

**CC:** The tender offers, I was going to go to that, but I was trying to think were there others at the time. I do remember tender offers and having a difficult time of some of the other rulemaking or regulatory issues from right at that time. Remember, another thing that you get into as a commissioner that really wasn't part of my work as chief economist was the decisions about enforcement of whether to sue an individual or a company for violating the securities laws. That's a big part of what a commissioner does.

As the economic staff at the Commission developed, they had some input into this. It became more over time, but enforcement actually found that there are very useful aspects of financial economics for it. Something that had been viewed with skepticism, I actually think it came to be viewed as very convenient by the enforcement staff in particular situations in analysis of stock prices, breaking down movements in stock prices as to what explains these movements. Certain people in the enforcement division began to wake up to the fact that economists could be helpful in what they were analyzing. By

that time, I think I was really a commissioner and separated from the actual day-to-day analysis of these things.

**RC:** That's something that technology would have helped with as well because you were there when EDGAR was implemented also.

**CC:** That's a good question. EDGAR, perhaps an interesting story, I can remember at some conference speaking about EDGAR. I was actually ridiculed in some newspaper stories for wasting the conference's time on such a silly topic as EDGAR, but realize, as I'm sure you do, that the whole idea of EDGAR was to computerize the disclosure documents. I've often thought back—what if we hadn't started that? What if we had taken the cue that it was silly to be wasting time on having registration statements or periodic disclosures available via computer?

I find it unimaginable that things could work without that because you were really faced with going to a regional office and saying you wanted a copy of the document. It was all paper. It just absolutely could not work whereas now people think nothing of accessing any of the disclosure documents online. Yet, this was viewed as something that the Commission shouldn't have been wasting time on, as such a frivolous project.

I think now it couldn't work with the disclosure documents if they were in paper form. Think about it. People want that immediately. They don't want to send away and wait for documents to arrive. They don't want to go to a regional office. You just get it

online. That was very important. It was at the behest of Chairman Shad where he said, “Look, we’ve got to get going on this.” I’m not saying that the staff wasn’t behind this. It was just viewed as so peculiar. Why would this be something that this regulatory agency was concerned with? I think that the way it’s panned out, it’s absolutely clear that you can’t think of it—a situation where there wasn’t EDGAR and the computerized filing and handling of the registration and periodic disclosure documents.

**RC:** As we talked about earlier, integrated disclosure would have been done before you got to the Commission.

**CC:** Integrated disclosure was promoted, was being accepted, was being put into place. One of the primary people behind that was Lee Spencer, who was director of the Division of Corporation Finance when I went to the Commission. He was one of the people pushing in this direction.

It’s another important area that I think makes complete sense, because again from the standpoint of a financial economist, you’re talking about how information is important. It doesn’t really matter whether the information was segregated into the registration statement or periodic disclosures. It’s all information and would contribute to the total mix and be important to market participants. I think it was that integrated disclosure, again, was a very important development. It was not something that either as chief economist or as commissioner that I somehow promoted or pushed. It was pretty much

in place, or the idea was that it was being implemented and put in place by the time I got to the SEC.

**RC:** If you don't mind I'd like to jump back to where we were talking earlier about the tender offers. You and the Commission had to look at the recommendations put forward by the advisory committee. What were the main debates about how the Commission should act on tender offers?

**CC:** I think the main debates were over whether the SEC should make the tender offer process more complicated or whether the SEC should put in place protections for investors but let the process work otherwise comparatively unimpeded. I think simply that's the situation that existed. Overall, I think it was the decision came to be made that the recommendations—and realize these were recommendations for legislation, not so much rulemaking—but the question was, should there be legislation that authorized an extensive intervention or were there certain things that should be done but otherwise leave the process to the market for corporate control? That's in short form, the description of what the Commission was faced with.

**RC:** There was also jurisdictional questions, in terms of what should be done by a federal agency and what should be left to the different state regulations.

**CC:** Yes, because basic corporate regulation is a state issue. There was the question of state versus federal and how much the federal securities laws could do versus how much was a matter for state corporate law. You're correct on that.

**RC:** A great deal of that, if I recall correctly, was dealt with by the Delaware court in some decisions.

**CC:** There again, to the extent that it is a matter of state corporate law and Delaware being one of the primary residences for major corporations, Delaware had a major influence into what was allowed or wasn't allowed for corporations, and especially in the area of tender offer protections. That was an issue that from the standpoint of investor protection was a question of what could the SEC do, or should it do, versus what was really an area of state law and a matter for states to consider and for corporations then to abide by the state law. That was all going on during the time from when I became a commissioner probably for the next several years.

**RC:** Would you say that the Commission's position evolved over that time?

**CC:** I think it evolved to the extent that there would be new issues periodically because nothing sits still. You deal with the new issues, the new areas, but in some sense it was the various market participants coming up with new ideas, new attempts at takeovers, new ideas for thwarting takeovers. I think it was all important for that to develop from the various inputs. I think it would have been worse to have some central and relatively

small authority making the decisions. I think that the diversity of the various participants was important and the interactions of state versus federal, the financial markets versus the corporations, all of it played a role. I think that by having a relative monopoly on ideas the outcome would have been worse than what did develop.

**RC:** One of the other issues from a governance perspective at this time is the one share, one vote that the New York Stock Exchange put forward.

**CC:** Yes. I did find that interesting. My views on it are the following: that it's related to the takeover area because some companies were finding that to have non-voting shares or super voting shares was a valuable anti-takeover mechanism. The New York Stock Exchange had a rule that there would be one vote per share for companies listed on the NYSE. What had been going on was NASDAQ, as an alternative, had developed to the place where it was truly competitive not just for new or developing corporations but for mature corporations. NASDAQ didn't have such a rule. Part of this was due to competition in the markets for stock and the New York Stock Exchange said, "Wait a minute. We're finding that there are companies that will stay on NASDAQ as opposed to moving to the New York Stock Exchange. We want to change this rule."

Then that developed into the idea of, "What about this? Should there be one vote per share?" The SEC got involved because the rules of exchanges in the markets for stock come under its authority, but the SEC wouldn't have had the authority to set the standards for corporations. It was a matter of state law. My views were different than the other



commissioners on this. The Commission was trying to do by the back door what it couldn't do by the front door. In setting one vote per share, it was attempting to do it through back door by requiring exchanges to have a rule saying to be traded here, whether it's on the New York Stock Exchange or on NASDAQ, a company has to have one vote per share.

My view was if it's fully disclosed and the shareholders decide that that isn't what they want, then as long as it abides by state corporate law, the shareholders should decide. We're not talking about voting in the sense of how there's one vote per person in a democracy. People have acquired these votes by purchasing the shares. It's not something you're born with as a citizen. It's a financial transaction.

I saw no reason why there couldn't be diversity in how corporations were set up. The market itself would decide subject to state corporate law how the companies were capitalized, what the votes per share would be and, as long as it was fully disclosed, then other market participants could decide whether or not they wanted to invest and what price they would pay for the company's securities. I opposed the Commission's efforts to impose rules on exchanges requiring one vote per share.

**RC:** Do you think in the years that this was happening the market was suggesting that it would tolerate multiple classes of stock or do you not see that as the case?

**CC:** Yes. I believe that there were studies to this effect, that it would not just tolerate multiple classes but that in a number of instances, a vote was not valued very much by investors. My view was that as long as there were thriving markets that there was room for differences in this and that if shareholders and a corporation wanted to have different classes of stock, that should be their decision as long as people knew what they were getting. This is one instance where I didn't have views similar to the other commissioners.

**RC:** One of the other issues that's tied to tender offers and takeovers is the insider trading scandals from the eighties. I'd be curious to get your take on how you saw them from the Commission.

**CC:** Of course, there was this going on where there are such newsworthy events as tender offers and with a control premium and so forth; there was a tremendous incentive for people who were not law-abiding market participants to use this to their personal advantage. At the same time that there were these various issues about how tender offers should work and were tender offers good or bad, there were also people with access to this information that were using it in violation of the rules against insider trading. If you go back and look at this period, there are various investment bankers and then onto Ivan Boesky. Here you had enforcement issues that were related to tender offers, takeovers and so forth, especially in the area of insider trading.

**RC:** It's complicated because there was a lot of debate. Obviously the Commission was expected to enforce the rules but there was some dispute about what the rules should be.

**CC:** I guess I'm not understanding completely, because certainly we were enforcing the rules against insider trading.

**RC:** I'm thinking more of the dispute about what exactly the definition of insider trading was.

**CC:** Okay. That I saw as an issue because especially during this time period, people were being sent to jail. In other words, criminal charges were being brought, people being sent to prison related to insider trading, and yet there wasn't a definition of insider trading. To me, it was important that especially where there are criminal consequences of violating the law, I think the law should be clearly stated.

From that view, I supported a definition of insider trading. There was an alternative view that if illegal insider trading were defined then people would find a way around that. But really I viewed it as more a job of the law of saying what you shouldn't do and then if people are finding a way to circumvent that, fix it but do not keep it vague so that you can catch people. I mean, it's almost like the cartoon of the little town that has a speed trap where the policeman is hiding behind the billboard.

There was this debate. That was an interesting time. As you probably know, the Commission proposed a definition of insider trading. We worked very hard on it. It was

a fairly short timeframe. I can remember continual meetings to hammer out a proposed definition of insider trading.

**RC:** Which ultimately didn't make it into the law.

**CC:** That is correct. Congress chose not to define insider trading. One of the reasons that I heard, although I couldn't tell you that this was the reason because there's usually a variety of reasons for what Congress does or doesn't do, is the very thing I mentioned that if insider trading were clearly defined, then some people would be able to figure out a way around it. I've already said I disagree with that view, but that is one that I heard at the time. There wasn't a definition adopted by Congress. Perhaps just through the development of the law up to this time, perhaps it is more clear now than it was at the time, but I still believe that fairness and justice would have been served by having a definition of insider trading.

**RC:** For a while during this period, you are the acting chairman. How did that come to be?

**CC:** Partly, I was the senior commissioner, but I was appointed acting chairman by the President. Again, that was an interesting experience. It was not so much different except more testimony before Congress and more of a concern with the budget than the commissioners. Those were two areas that I noticed more. Also, the chairman sets the agenda, but I don't think there was any real agenda setting to either keep things away from the Commission or to bring particular things before the Commission, so that prior to

becoming acting chairman, I don't think that went on. I certainly didn't play any games with the agenda.

**RC:** That raises a question in my mind. As a commissioner, are the responsibilities for the different divisions divvied up between the commissioners?

**CC:** No, not at all. You're involved in everything, all aspects of the regulation. I think that's a good idea because if you really had one commissioner for corporation finance, one commissioner for a different division, I just think there would be less diversity, less mixing of ideas. I think it's better to have the commissioners involved in all of the areas.

**RC:** I didn't know if some were seen as having different expertise.

**CC:** They might have taken more interest in one or the other, but still it was full participation in all the decisions as far as rules or enforcement matters.

**RC:** There're a couple of other things I'd like to ask about. I'd be interested in hearing your perspective on the market break and what experiencing that was like at the Commission.

**CC:** That was a very interesting experience. This would have been in 1987. At the time, I think that one aspect involved was perhaps an over-reliance on the idea of portfolio insurance. This would have been using financial futures in a way that was supposedly

supposed to work to prevent losses on a portfolio of stocks, so using futures combined with investing in stock.

I think another aspect here was market capacity. When you looked at the capacity of the various stock markets at the time and compare it to now, when you look at the volume of trading, that kind of thing, it's a mindboggling difference in the amount of capacity that the markets had. When there was really this crunch of people trying to adjust positions quickly, the capacity wasn't there. That generated some statements about closing the markets and that kind of thing, which I think caused some people to panic.

There was the market break in 1987. Interestingly enough then there was a debate over was it these financial futures that were the cause? Was it capacity? There was that kind of debate. When you begin looking at the proposals or the ideas that came out of this to fix things, it was surprising that most of them had been around for a long time. It was like bringing out, not something directly aimed at what the problem was with the market break, but, "Here's a good chance to institute this regulation that we've been pushing for years."

**RC:** Never let a crisis go to waste.

**CC:** Yes. It was educational. That is really a true statement that you see things being brought around as, "Here's a chance to do some widespread fine-tuning and modifications of regulations. Put this one in the hopper."

**RC:** What sorts of things were people looking to place in the hopper?

**CC:** It's a little too detailed for me to recall. I do know that at the time, it was not just focused on what had happened and what could prevent a repetition. It was as much as, "Well here's something from a few years ago that never has generated much interest. Why don't we have it?" You'd say, "How's that related to the market break?" "It isn't really, but it would be nice to have."

**RC:** One of the other things that struck me is it seems like in this time period periodically different groups surface with questions of regulation. The question of, "What is the role of the SEC in regulating either futures or financial advisors," or things like this. It seems like there's an ongoing discussion about who or what does the SEC have jurisdiction over.

**CC:** That became more of an issue later. Back at the time there was this question about futures, especially with the development of financial futures and the SEC. I know that since I had written a PhD dissertation regarding futures trading that some of the interests in the futures area had decided that the reason I was at the SEC was to help the SEC take over regulation of futures trading. I remember people coming to visit me, I guess you would say lobbyists, related to the futures industry and actually putting the question to me. I said I thought it was a happy coincidence that I had some knowledge of the futures

markets but my role was not to somehow help the SEC make an attack on the areas of the Commodity Futures Trading Commission.

If you look at the news accounts there back before I arrived at the SEC, there was an accord between the SEC and the CFTC over areas of regulation, and that continued the entire time that I was at the Commission. As futures trading developed more into the financial areas, there began to be questions of what kinds of financial futures could be traded and would they or would they not have an impact on securities.

Obviously to some extent they do because simple arbitrage between various futures products and the securities products would have an effect. It wasn't an issue that was at the top of the list. It was more people outside either the SEC or the CFTC making suggestions that it really should be one agency. It was never something that there was any serious discussion about while I was at the SEC.

**RC:** Why did financial futures start to develop at this time?

**CC:** I think that part of it was due to entrepreneurial behavior by certain individuals in the futures markets that began seeing areas that would work and had potentially more widespread interest than even the agricultural commodities. One that I would mention is Leo Melamed from the Chicago Mercantile Exchange who was really one of the sparkplugs in this. I think that what was happening was expanding internationalization of the financial markets.



Remember, one of the areas I think that began financial futures was the area of foreign exchange. That contributed. I think the growing importance of financial markets at the time created the opportunity. It wasn't certainly that regulators were out there leading the charge. It was more a development from market participants that the regulators were reacting to.

**RC:** Are there other issues that stand out to you as being significant during your time as a commissioner?

**CC:** I think we've certainly hit the high points. I'm not thinking where I'd say, "Ah, I'd like to make a comment about the following." I think you've done a pretty good job in posing questions.

**RC:** Let me cover what you've been doing since the Commission. You left the Commission in 1989?

**CC:** That's correct.

**RC:** Did you come straight to Compass Lexecon at that point?

**CC:** Yes. At that time, it was known simply as Lexecon. It's since then that we joined with the company Compass to create Compass Lexecon. Yes, I joined Lexecon in 1989 and have been here ever since.

**RC:** What types of things have you been doing since you've been here?

**CC:** I'm an economist here. Lexecon and now Compass Lexecon is a consulting firm that applies economic analysis to legal and regulatory matters, which means that basically I supervise research projects that are related to either litigation or various regulations. From time to time, I testify about the results of that research, if it's litigation. I found this to be midway between what I did at the SEC and what I did in academics. It was a happy mixture to me.

**RC:** It sounds like fun.

**CC:** That put me in a good place as far as I had a good time at the SEC. I had a good time in academics. I've got some of both.

**RC:** It sounds like it would be really engaging to direct these projects.

**CC:** It is. You learn a lot about topical issues.

**RC:** One of the other things I did want to ask about is you served for a couple of years as the chairman of the United Shareholders Association.

**CC:** Yes, I did.

**RC:** I'd be just curious as to what were the major issues that you faced when you were the chairman there.

**CC:** The idea was giving shareholders access to corporate decision-making. It was corporate governance I guess. By the time I was chairman of United Shareholders Association, the market for corporate control had changed somewhat. There weren't really the number or the importance of various takeovers, especially hostile takeovers. That had gotten more or less sorted out into various combinations in state law, federal law, and so forth.

One of the areas we dealt with while I was at United Shareholders was the idea of how corporate management is paid. The idea expressed at the time was, "It's not how much, it's how." That was the important question. Was it related to the performance of the corporation as far as shareholder value or did it seem to be disassociated from that? That was one primary area of focus while I was at United Shareholders. I believe that partly United Shareholders was responsible for some of the ability of shareholders to have some say about pay in relation to how the corporation had performed financially. That was the area that strikes me now as one of the most important while I was there.

**RC:** The early days of say on pay.

**CC:** Yes, right. Another thing I would say is that rather than become an organization that spends all of its time raising funds, we decided that we were pretty much at a point where we didn't have a new major area in which to proceed. We wound up the United Shareholders Association, rather than say let's think of some ways to raise funds and let that become the driving force. I think we'd done a pretty good job. It was time to move on.

**RC:** Is there anything else that you'd like to discuss or that comes to your mind?

**CC:** We've covered a wide range of things, a lot of which happened a long time ago. I've done my best to come up with my most accurate recollections. I can't think of something else that I would like to add to the interview.

**RC:** Great. It's been a pleasure talking to you.

**CC:** You're welcome. It's been my pleasure too.

[End of Interview]