Securities and Exchange Commission Historical Society
Interview with Alan Beller
Conducted on May 31, 2013 by Robert Colby

RC: This is an interview with Alan Beller for the SEC Historical Society's virtual museum and archive of the history of financial regulation. I'm Robert Colby. Today is May 31, 2013. We're conducting this interview at the Washington offices of Cleary, Gottlieb, Steen & Hamilton. Mr. Beller, thank you for being with us today.

AB: My pleasure.

RC: Let's jump right in and talk a little bit about your early life. Where are you from originally?

AB: I was born in New York, but my family, when I was two and a half, moved to Philadelphia and I really grew up in downtown Philadelphia.

RC: Were you interested in law or securities or economics?

AB: I really come from a family of physicians. My grandfather, my father, my brother are all physicians. I have a great-uncle who practiced law in New York, but no, I didn't really have much contact with law or the business world (with the professional world yes, but the business world no) while I was growing up.

RC: How did you come to be interested in law?

AB: When I went to college, I started as a biophysics major. I actually thought I was probably going to medical school. At some point, it became clear that while I was okay at that, there were others who were much more dedicated to it than I was. I became more interested in public policy issues. I ended up being an urban studies major with a slant towards environmental issues. I can't say I knew I was going to go to law school, but I thought when I graduated I would probably go to law school. Real estate, urban studies, environmental issues were probably what I was interested in. That was my original pathway to the law.

RC: When you got to law school, what did you focus on there?

AB: A little interlude because I didn't go straight from college to law school. I spent two years working in the city planning department in New York City in the last two years of the Lindsay administration. That got me very much interested in real estate and planning. When I went off to law school, it was with an open mind but with that as a plausible direction.

RC: Were there courses or mentors who shaped your direction?

AB: There were mentors who shaped my interest in the law. They actually didn't much shape the direction of my career. I didn't even take securities regulation in law school.

RC: (Laughter.)

AB: I wanted to, but I spent most of law school looking for people who were, at least by reputation, the best professors, and took those courses. A man named Bob Mundheim who has played a role throughout my career, Bob taught at Penn, but he was on sabbatical my third year. The securities regulation course with Bob was not available. I spent most of my time probably with two constitutional law scholars, Paul Bender and Louis Pollak.

Paul has continued to be a professor. Lou was a professor at Yale and then Penn, dean at both Yale and Penn, is now a senior judge in the Eastern District of Pennsylvania. They shaped my interest in the law probably more than anyone else and obviously not necessarily on the securities law side. Nonetheless, I went off to Cleary Gottlieb.

RC: I was going to say what took you to Cleary Gottlieb?

AB: I'm not sure I was different from many students. What I enjoyed looking at in law school was not necessarily what I thought I was going to spend the rest of my life doing. I wanted a big firm. The big question for me was New York versus Philadelphia. I went to Penn. I went to college at Yale. I went back to Philadelphia for law school and was married at the time.

My wife was also from the Philadelphia area. We wrestled with did we want to stay Philadelphia or did we want to try New York. I had worked in New York for the two years. We decided New York. I wanted the big firm. I wanted a diverse enough practice to figure out what it was I wanted to do. Cleary was a very attractive choice.

RC: What did you find yourself doing there coming out of law school?

AB: I suppose the most important thing about my early career at Cleary is that I was in New York for only eight months when I went off to the Paris office. Those eight months were a typical first year associate mix. I did a little litigation. I did a lot of work on some secured credit agreements for a troubled company that thirteen years later went into bankruptcy and liquidated.

I did a public company M&A transaction and a public company offering for the same company in that timeframe. Those two were my first securities law experiences. They were not dominant in that first eight months.

RC: How did you end up in the Paris office?

AB: Cleary has had, for a very long time, a very substantial international presence and has a policy of sending associates from both New York and Washington to its foreign offices. The non-U.S. offices have historically been staffed with a mix of local law practitioners and U.S. practitioners. We needed people in Paris. I spoke a little better than rudimentary French.

I spoke enough French that they thought I would be okay over there, my wife also. I guess in the first eight months I hadn't committed a felony. They decided that they could, with some small modicum of risk, send me off to Paris. We don't send our problem children to the foreign offices because they are small. There is less supervision. You're more on your own. That was actually part of the experience, if you want to talk about that.

RC: Yes, I'd like to hear what your experience was there.

AB: Again, it was a twenty-two or three person office when I was there. Only six or seven of us were Americans. It felt like a real French law office. If you didn't speak enough French, you couldn't even get a cup of coffee in the morning. The practice was broad. I was there for four years. For about a year and a half my principal matter involved being the litigator liaison with a team in New York when we were representing a French client in a U.S. litigation.

I represented the Republic of France and the equivalent of their Export-Import Bank in a U.S. bond offering but also in a Japanese bond offering. I did a lot of work in the Euro bond market. That was securities related, but very much not in the U.S. mold. I did a large variety of other things, a lot of M&A and a lot of other corporate transactions.

There was not a lot of substantive legal content. There was a lot of negotiating and drafting and lawyering, if you will. The way I think of myself having come back from the Paris office in 1981 after four years there was I knew almost no law. I certainly knew almost no U.S. law. My particular area of expertise was the French exchange control regulations, but I was confident that I knew what it was like to practice law and to deal with clients. I had been much more on my own.

For example, somewhere in my third year I was sent down to Lisbon with a bunch of bankers who were even younger than I was to negotiate the first international credit agreement between a Portuguese public sector borrower and the international banking community after the end of the Franco and related Portuguese Salazar era. That was pretty big stuff. It was pretty big news. A third year associate wouldn't find himself in your typical New York office doing that sort of thing. I had that confidence but didn't know very much substantive law.

RC: Where did you pick up when you came back to the States?

AB: I came back to New York knowing corporate practice was certainly what I wanted to do and having seen enough of the securities world that I thought I could be interested in it. I also frankly felt some urgency that I had to learn some substantive law if anybody was going to want to keep me around. The very first thing I did when I got back, it was the summer of '81, I fell into the acquisition of Salomon Brothers by Phibro Corporation.

It was the first of the big private investment banks being, in effect, acquired by a public company. It was not quite what it seemed because within two years, Salomon had in fact taken over Phibro as opposed to the other way around. Salomon, Inc. became a significant U.S. public company.

We were representing Salomon Brothers. I worked on that. I was the senior associate on that with a small team of partners and other associates. That particular transaction was not itself a securities transaction; it was an acquisition of a limited partnership. The target, our client, was a securities firm. The relationships I started to build there turned into an ongoing representation of the Salomon subsidiary piece of Phibro. Then as Salomon in effect became the dominant part of that relationship, representing Salomon.

That was my first important investment banking, broker dealer, or securities law-related client. It built from there. I've found through my career you make relationships with clients. They can become important. Where the client takes you is, in a sense, where you go. Nobody becomes a real generalist in 2013 anymore, but you develop breadth of expertise depending upon what your client needs.

RC: Were you encountering governance issues at this point at all or is that a concern?

AB: I don't think the term governance had entered the lexicon. I think people thought about whether executives were effective. I think people thought about whether boards were effective. I think the standards that people used to measure were very different. I don't think they thought about the issues in terms of the way we now think about governance issues. There was not really very much attention paid to, "Was the governance good?" There was attention paid to, "Is the performance good?" That was important then.

RC: You're in the U.S. practice for almost a decade. Then you go overseas again. How did that come to be?

AB: In the U.S. practice I really did become increasingly a securities lawyer. I ended up most of that decade having a strong minor, if you will, in broker dealer regulation and in trading and in the development of new products for investment banks. The eighties was a time when the investment banking world really was looking for new products. It was driven in part by the economic environment. I think high inflation and high interest rates tend to lead to that kind of innovation just as I think the current low interest rate environment, you're seeing less new product development in a 3 and 4 percent per year interest rate world than we were seeing in a 17 percent interest rate world like you saw in '82/'83, or 15 percent, 14 percent.

The Tokyo experience was—I'd been a partner for six years. We had opened Tokyo in 1987. Ed Greene, who was one of our most important senior securities partners, had gone out there in '87. We were operating with the strategic assumption that Japan would develop important capital markets opportunities and securities law opportunities. That's why Ed was out there. That's why I replaced him when he went on to London. I think what both Ed and I found and the firm found was that while there were significant opportunities in the region—in Ed's case it was largely in Hong Kong, in my case it was largely in Korea and Singapore—there really wasn't much in Japan.

Tokyo was certainly a base from which I operated for three-and-a-half years. We did almost all of the significant Korean privatizations and market-opening steps in that period. In about 1991, the Korean government decided that the large Korean companies, most of which were government owned or controlled, or at least many of which were, needed access to the global capital markets in a way they hadn't before.

They had been huge borrowers from the Japanese banks who were awash in liquidity, but they hadn't really been issuing securities anywhere. Having decided they needed access to the international markets, the Korean government then decided well, should we focus on London or should we focus on New York? To the advantage of Alan Beller and Cleary Gottlieb at least at the time—I think that pendulum has swung—their focus became New York.

The Republic of Korea's government entities, the Korea Export-Import Bank, the Korea Development Bank, started doing Yankee bond deals in the United States. Korea Electric, which we did not represent, privatized first debt then equity into the United States. Pohang Iron and Steel, which we did represent as issuer's counsel, did the same thing. Samsung, which was not government owned, but which was and still is a huge company, did its first U.S. bond offering in '92 probably. We were in the middle of all of that. That became a very important focus of my practice. I spent literally months of my three-and-a-half years as a resident in Tokyo, in fact living in a hotel in Korea. I spent a lot of time in Singapore because we did the privatization of Singapore Telecom as underwriter's counsel.

Those were certainly the dominant aspects of my practice out there. In Japan, the work was largely regulatory, helping Japanese financial institutions and foreign affiliates of U.S. financial institutions think about the interplay between Japanese and U.S. regulation and doing some restructuring work. There was some M&A work going on but not a lot. That's what my practice looked like.

RC: I imagine that gave you a good amount of insight into both the U.S. markets and the foreign securities markets. Can you tell me a little bit about that experience?

AB: It did. It was certainly a very important part of the Singapore deal because while the Singapore deal had started out as possibly a U.S. listing and then a joint Singapore-U.S. listing, it ended up as a Singapore public offering and a Singapore listing and a U.S. institutional unlisted offering. As the transaction evolved, it became necessary to work very closely with the Singaporean government and Singaporean counsel to try to meld the two rules together and come up with an offering structure that could be executed in both locations.

That's something that starting in the eighties became an important part of the toolkit for international securities lawyers and still is. Cleary Gottlieb and other law firms with the same kind of profile spend, still, time—how do we make this Russian offering structure work for U.S. investors, how do we make this Chinese offering structure work for U.S. investors, how do we make this Brazilian offering work for U.S. investors?

Singapore Telecom was hardly the first. Ed Greene had done things like that with Hong Kong. We had others at Cleary who had done things like that with Telmex, the Mexican phone company when it privatized in 1990 or '91. Actually, as I'm talking I'm remembering there was also a Japanese aspect to the Telmex offering. I had recently arrived in Tokyo. I worked with my partners in New York for a little bit thinking about how to make the Telmex structure work not just in Mexico and the United States but also in Japan.

It's an essential part of what we do. There was actually one of my partners at Cleary, a man named Tsunemasa Terai, who is now retired, with whom I wrote an article. It's long lost in the mists of history. I think it's the University of Texas Law Review, on the differences between the Japanese and U.S. IPO offering processes. It was something that I was interested in. It was something that was important for the practice.

RC: What were the significant differences? What made companies choose to offer one versus the other or to list in different?

AB: Let me start with what is probably a hyperbolic premise, but it's nonetheless okay to start with it. If a company can raise the capital it needs in the global market by listing only in its domestic market and then figuring out ways to offer securities around that domestic offering and listing, that's what they'll do. That's what they're familiar with. That's what they know. It's the least expensive. It's the least challenging. All these structuring issues I talked about, many of them disappear. You don't have to worry about foreign accounting rules. You don't have to worry about foreign governance rules. You don't have to worry about foreign listing requirements.

In the eighties, for most companies in most countries that wasn't going to work. The issue really became London or New York. The SEC, the New York Stock Exchange and also NASDAQ worked very hard to make the U.S. public market appealing to non-U.S. issuers throughout certainly the late eighties and the nineties, and were quite successful. They made their accounting rules a little easier to deal with. They had fewer listing requirements. Some of the disclosure requirements didn't apply to foreign companies.

I'm going to jump ahead a little bit because this is relevant to some future parts of my career. When I was asked in the fall of 2001 if I would go to the SEC to run Corp Fin, Harvey Pitt, who was the Chairman at the time, he and I talked mostly about two things. One was updating and modernizing the disclosure system. The other was thinking about how the international system could continue to be made attractive and could indeed be made more attractive.

Sarbanes-Oxley made the second impossible. Sarbanes-Oxley was a watershed moment when the United States Congress said—and I've never known how intentionally they said it—but to some degree it was clearly intentional if you look at the legislative history -- that foreign companies, non-U.S. companies should not get a break when they come to the U.S. market. That was a watershed event. A non-U.S. company looking at the U.S. environment in 2002 or certainly 2003 saw an SEC regime that was no longer as hospitable as it had been for the previous almost twenty years.

Two, a litigation environment that was scarier than the environment in London or in other imaginable foreign markets. Three, and most importantly, by 2003 and certainly increasingly today, the number of companies that can list in their domestic market and have a very large global offering based on that listing has increased markedly. For example, I remember this distinctly, in 2006, I went back to Cleary Gottlieb from the SEC.

The first week I was there, one of the things I learned about from my partners was we were working on a multi-billion dollar common stock offering for a Brazilian issuer that was listed only in Sao Paulo. Not in New York, not in London, only in Sao Paulo. Frankly, if global institutional investors believe that the Sao Paulo market is liquid enough and high enough quality to support a big global company, go back to my original premise, that Brazilian company is not going to list in New York or London.

RC: That wouldn't have happened twenty years before.

AB: Never. What I think you're seeing now is that companies that come to the global markets and list there because, one, they're still in countries that don't have enough of a local market or two, there's something about what they do and there's something about the multiple they might be able to get in a foreign market that's higher. I'm not an expert.

I don't vouch for the proposition, but for example, the proposition is out there that non-U.S. tech companies get a higher multiple on the NASDAQ than they get in their local markets. You do hear of foreign companies coming to list on NASDAQ because they think their trading price will end up being higher. I have no idea whether that's right or wrong. The calculus has become different in that respect.

RC: Unless there are other things about your first stint at Cleary Gottlieb, I wanted to jump to what you were talking about and what brought you to the SEC.

AB: I had a very rewarding career when I came back, by the way. From '93 to 2000, I did some really important IPOs and listings -- including Goldman, Prudential, Deutsche Bank and Credit Suisse -- and had a very interesting practice. I mention that because Harvey Pitt called me in October of 2001 about the SEC job. He and I knew each other a little bit. There'd been an opportunity to talk a little bit about disclosure issues after he became chairman. He called and he said, "Is there any way I can interest you in coming down to Washington?" I honestly thought the answer to that question was almost certainly, "No."

It was not that I wasn't interested in the SEC. I knew it pretty well. I'd had dealings with all of the Corp Fin directors from Linda Quinn who was there from '86 to '96 on. I had a good deal of respect for the agency. I just really enjoyed what I was doing and thought it was probably the best job in the world. It took Harvey a month to convince me that that might not be the case. I think it was the week before Thanksgiving of 2001, so November 20th or something, I said to Harvey that he had made the proposition compelling enough that yes, I would do it.

As I said, the two things we thought we were going to focus on were the disclosure regime and international issues. At the same time he named me director, he named me senior counselor to the Commission. People have often asked me what he was thinking and what I was thinking. I can't promise you I know what he was thinking. I think it was a recognition that my breadth of experience was really to a very significant degree greater than anybody who had walked into a staff position at the Commission before, to sound immodest. I'd been practicing for twenty-five years. I'd been all over the world. I understood the international markets (or so people think). I knew a lot of different things. It was a recognition of that.

I think the thought was that the title would give me the opportunity to be a little bit of a minister without a portfolio. If a Commissioner wanted to talk about Market Reg stuff, because I had done a lot of broker dealer regulation, what's now Trading and Markets, or if a commissioner or the chairman or I wanted to talk about investment management things. I had done some of that in my career as well. It wouldn't be meddling. That's kind of what it was. Over the four years, I did participate in a bunch of matters that weren't involved in Corp Fin.

It clearly wasn't the major part of my workload. There were a couple of Commissioners who quite regularly would ask me, "I know this isn't Corp Fin but what do you think of this?" I said, "Yes," to Harvey in any event. What you have to know is that I said, "Yes" on November 20th, let's say, of 2001. My first day at the Commission was January 14, 2002. Enron had filed for bankruptcy in December. As a result, the job I had at the SEC was never the job Harvey and I talked about.

There is one other thing Harvey and I talked about doing, which we did do, and we'll get to that, which is to complete the so-called process of securities offering reform. We finally passed the rules in 2005. But Enron completely changed the universe. I spent my first day at the Commission in Norwalk, Connecticut, which is the home of the FASB. If it had not been for Enron, I promise you I would not have been at the home of the FASB on my first day at work.

RC: If I can jump back for just a minute, with modernizing disclosure and making the U.S. markets attractive, what were your and Harvey Pitt's goals in doing that? What did you hope to accomplish on those fronts?

AB: Making the global markets more attractive was pretty inchoate, but we knew some of what I'd been telling you before, we knew that the day was coming when more non-U.S.

companies were not going to need the U.S., the New York or NASDAQ markets to the degree that they did in the 1980s and 1990s. We knew that the EU by becoming a more unified market was going to become a more attractive market. The question was, is there a way for the U.S. to become what really would be the lynchpin of a global market where everybody will want to come to that because that's where everybody is? One of these "if you build it, they will come" ideas. That's clearly not the vision now.

By 2004, it was clear it was not going to be the vision in the United States because there was no way after Sarbanes-Oxley you could build something that would cause people to come. Indeed the opposite was the case. There were a large number of foreign companies who figured out, "We don't need the U.S. market anymore." They were leaving rather than coming. The net change in non-U.S. company listings since 2002 has been very significantly negative. Events completely overtook us.

As to updating disclosure rules, people are still talking about it. There's a provision in the JOBS Act that requires the SEC to do a study of the principal disclosure rules, which are called Regulation S-K. There is such a study. But Alan Beller said he wanted to modernize disclosure. My successor, John White, said he wanted to do it. His successor, Meredith Cross, said she wanted to do it. Events and bandwidth have really made that not happen. I think my predecessor David Martin said he wanted to do it.

There are two problems with disclosure, at least two, maybe more. One is there's too much of it that nobody really cares about. Not only that, but it tends to obfuscate the stuff that people do care about. Is there a way to encourage or require disclosure that's both shorter and more meaningful? The second point is we live in a world where information is delivered electronically. Yet, the SEC disclosure system is still built around a set of forms, which are paper forms.

Every quarter, a U.S. public company files something called a 10-Q, which is the quarterly report. It starts at the beginning. It finishes at the end without any real recognition of, "this is what happened in the quarter and this is what's important. Of the hundred pages we just filed, we haven't changed sixty of them since the last quarter." If all this stuff is being delivered electronically, isn't there a way to set up a more dynamic way to disclose stuff?

Joe Grundfest, who's a professor at Stanford and a former SEC Commissioner, and I wrote a very short article. We intended to turn it into a longer article. The short one was published about that question of how you can update the disclosure review, not from the point of view of substance, but from the point of view of using the current electronic online environment to drive the process. That sits out there also, unachieved at the moment. That's what we were thinking about.

RC: Those were derailed.

AB: Those were derailed.

RC: Your first day you're at FASB. Then going forward, what steps did you and Corp Fin and the Commission take in the wake of Enron?

AB: I think it's important to set the stage both post-Enron and post-WorldCom. Post-Enron there was, as you know, a very significant negative market and political reaction. The politics are very different from what we have seen since the financial crisis of 2008. The political environment was such that there was, in effect, bipartisan support at the White House, in the Congress and at the Commission for actions that were responsive to Enron. There was not 100 percent agreement as to what those actions should be, but there was 100 percent agreement that there should be responsive actions in light of a crisis in investor confidence and financial reporting shortcomings. My view is that that same situation is not there today.

The reason I mention that is within weeks of my arrival, we were focused on a couple of pretty significant initiatives that dominated the first quarter to half of 2002. One was that there was a clamor to restore confidence in the markets. What does that mean? The week I arrived, Harvey, the Chairman and the Chief Accountant, Bob Herdman, announced that there would be an end to self-regulation of the accounting profession. Enron was thought of as a massive audit failure. One of the responses was the audit profession was until at that time self-regulated and that, in one fashion or another, was going to end.

Sometime in early March, starting very shortly after I arrived, the President wanted to put together a program of responsive actions that could be accomplished without legislation. That was developed at the White House. It was developed with agency input. It was actually developed by the President's Working Group, which was and still is I guess chaired by the Secretary of the Treasury and included the Chairman of the Fed, Chairman of the SEC, Chairman of the CFTC. Those four people and very limited numbers of their staffers met for several weeks starting very shortly after I arrived.

The result was the President's Ten-Point Plan, which was announced in March of 2002. The President's Ten-Point Plan included things like making executives more responsible for disclosure and included a new regime for accounting regulation. I think it included things about reports of securities trading and several other things.

The third thing that was on the top of my plate very shortly after I arrived was the risk of Arthur Andersen's indictment. That was going to be a Justice Department decision.

RC: What was the concern about that?

AB: Actually it was very interesting. Bob Herdman and I were talking. He was the chief accountant and he and I were talking about Andersen one Friday afternoon in his office. It occurred to me that this was Corp Fin's problem. Bob would be left with the situation where if Andersen was indicted, there was a very big chance that it would go into some kind of wind-down mode and that would be that. There were several thousand public companies that were audited by Arthur Andersen whose audits would be due, and that would be Corp Fin's problem.

If they were calendar fiscal year companies, and most were, their audits would be due mid-April. We were in mid-February at this point. An indictment might come down soon, and we did not have any sense of a) whether there would be an indictment or b) if there was, when it would happen. Andersen might therefore be in a position where it could not complete audits. We could not tell 3,000 or 3,500 or however many public companies there were, "You can't file your annual reports. You're out of compliance. You can't go into the capital markets. Call us in six months."

We had to come up with a set of crisis rules that would allow things to work if the worst case scenario came to pass. In fact, Andersen was indicted. It was indicted much closer to April 15. Most audits were in fact completed. But we had on the shelf, written in complete confidentiality, except for the commissioners who were aware it was going on and a very small number of people on their staffs and the general counsel's office and my staff and sprinkled around the building, a set of rules which were adopted by the Commission on an emergency basis within two or three days of the announcement of Andersen's indictment.

RC: Those rules were providing a way for companies to complete audits?

AB: The rules provided for a way for Andersen to complete audits, but only if they had the resources and could meet the quality standards to do so, and provide a way for companies to survive and figure out how to switch auditors and do audits with somebody else if there was not a way for Andersen to complete those audits. Actually things went off pretty smoothly.

Those were the things that were top of mind over the first little while. What we then went into in the political environment was that the relevant committees, House Financial Services and Senate Banking, both by about April had reported bills out that were responsive to the Enron events. Neither of those bills made it to the House or Senate floor through the spring. I think we, at the Commission, were operating on two premises. One, it wasn't clear to us that the legislation was going to go anywhere. Two, we had the President's Ten-Point Plan. Our mandate was to implement the President's Ten-Point Plan.

You will see if you go back that there were SEC rule proposals to implement the Ten-Point Plan starting as early as March, with the acceleration of reporting of insider trades to two days. The then-existing statute, by the way, did not authorize the acceleration of this time frame to two days because the statute specified a longer timeframe. The Commission issued a proposal that required the companies to make the accelerated report rather than the executives. The proposal never was tested, but we had it out there.

We proposed a CEO/CFO certification program backed by a robust set of what became known as disclosure controls and procedures. The CEO/CFO certification was not a new concept; it had been proposed, for example, in 1998. But disclosure controls and procedures were new. Their purposes were in the first instance to make sure that the CEO and the CFO knew what was going on below them so they were responsible and could make decisions as to whether or not they knew what they needed to know and could certify based on what they learned in terms of disclosure.

The Commission also proposed—it was not called the PCAOB. It had a different name and a different acronym. It was a proposal to have a private sector independent regulator of the auditing profession for public companies.

There was a proposal to beef up current reporting, so-called 8-K reporting. There were about a dozen different items that were proposed to be added to the 8-K list, and we proposed shortening the timeframe for reporting. We were working our way through this agenda I'm describing when WorldCom happened, which was late June, the 25th maybe of June.

Literally within a very small number of days, it was clear that the legislation that had been sitting around in Congress was in fact going to be adopted. That's what became Sarbanes-Oxley. It took until the end of July, which was a little more than a month, which is not very much time for the Congress of the United States. President Bush came out in favor of it within seventy-two or ninety-six hours of the WorldCom announcement. That was going to be the law of the land.

There are a number of provisions in Sarbanes-Oxley that are in fact very close to what we were working on in the Ten-Point Plan. The SEC did not formally have a lot to do with Sarbanes-Oxley. There was some informal give and take. Harvey Pitt had testified. I think other Commissioners had testified back in the spring. That certainly became part of the record on which Sarbanes-Oxley was built. By the end of July, the mandate had become not to work on the rules we had proposed, but to implement Sarbanes-Oxley, which in some cases was very close to what the Commission proposed. In other cases, it was different.

RC: How does the change from implementing the rules that you've written to implementing these Congressional mandates change the atmosphere in which you're operating?

AB: I think the biggest difference was, again given the political environment in late 2002, the Commission to a person endorsed Harvey Pitt's position: the Commission will do what Congress has told it to do. We will implement Sarbanes-Oxley. We will do it in the timeframes, which were by and large six months, that Congress imposed. That's what the Commission and the staff did.

That was the biggest change. "Is this a good idea, is this a bad idea?" disappeared from the conversation. Congress had spoken. The timeframes became very high pressure, very intense. People worked very hard, tons of staffers, not just yours truly. The commissioners worked very hard. We were sending them three and four releases a week. They were, in fact, making their way through them and giving us comments. There was a lot of everybody pulling his or her oar in the same direction. There were actually a couple of things that had to be implemented within thirty days.

RC: Such as?

AB: One of them was the insider reporting. I can't remember what the other one was. In part because we had proposals out, we actually were able to do that. The Commission adopted them as temporary permanent rules while we asked for more comment on them. We made even the thirty day deadlines.

The other thing that happened as a result of WorldCom, which I think was very much on the top of people's minds in 2002, but has disappeared from sight, and this was largely Steve Cutler's idea. Let's make the largest thousand companies, the CEOs and CFOs, certify using a provision of the Exchange Act called Section 21(a). Let's make them certify that their past reports are accurate. Let's give them enough time to amend a filing to make them accurate, if they think they needed to do that, if they thought there was something wrong with them historically. Let's give them a quarter to fix it. There was a due date, which depended on their filing schedule.

Essentially on August 14, 2002, a very significant number, more than 900, of the 1,000 largest U.S. companies sent in certifications by their CFOs and CEOs under penalties of perjury that their prior financial statements and financial reporting were materially correct. This little exercise, which was designed entirely as a confidence builder, "Let's tell investors that the entire market is not in fact rigged," became a very significant media event. There were stories every day, certainly in August and in the lead-up—"What's going to happen?" August 14 came and went. More than nine hundred certifications were filed.

There were a couple of handfuls of companies that certified that their statements had not been accurate. We did whatever we decided we should do with the companies in those cases. The vast majority came in with certifications that their disclosures were materially complete and correct. The world moved on. August 14, which was thought was maybe going to be kind of an "oh my God day," turned out to be a very nothing day, which was exactly what we wanted.

The other thing which is more a Corp Fin thing but is worth mentioning because you asked what was going on, we made a very conscious decision to focus more on larger companies than had historically been the case. My way of describing it was I think Enron was commonly viewed as having destroyed $70 billion of shareholder value. It might have been illusory shareholder value, but investors thought they had it.

It takes an awful lot of small cap companies to blow up $70 billion. We ought to be using our review resources with due regard to that. There's due regard to a contrary proposition which is even with all that happened with Enron and WorldCom, it is probably the case that there's a larger incidence of bad financial reporting in smaller companies than there is in larger companies because that's probably the way the world works. But the risk of large loss is the opposite.

The second thing was we decided we needed to focus more on financial reporting. Sarbanes-Oxley actually picked up on that; that you have to review financial reports of every public company at least once every three years is one of the provisions of Sarbanes-Oxley. One of the things we did over time, because we couldn't do it immediately, but over the time I was there we hired a lot of accountants so we could do more financial reviews. We got some money with Sarbanes-Oxley which allowed us to hire a large number of accountants.

RC: With the other things that were provisions, the ideas of expanding the significant event forms, auditor independence, executive certification, were there ones that drew special emphasis from Corp Fin or was it more doing what was next on the docket?

AB: We had to do what we had to do. I think the ones that were the highest profile and which required the most care were the what you call significant events which I think of as current reporting under 8-K. That was an important and high profile event. The CEO/CFO certification and disclosure controls was important. The insider reporting was certainly viewed by the public as very important. It wasn't that hard to do. Making it electronic was a little tricky to do as a kind of nuts and bolts technical matter.

The audit committee rules were extremely important and challenging. One of the reasons frankly was, as I said to you earlier, that Sarbanes-Oxley operated from the premise that foreign companies didn't get a break. That is by and large what we implemented, notwithstanding the unhappiness of the foreign issuer community. It was what Congress wanted. In the audit committee rules, however, there were some things in Sarbanes-Oxley that were simply not permissible for foreign companies.

RC: Such as?

AB: I'll give you the first example that was called to my attention, which involved the requirement that you could not have people who were affiliates or insiders on the audit committee. Under German corporate law, half of the board of supervisors is employee representatives, members of the labor unions. The question was are we going to tell German companies they can't list in the United States because they've got representatives of their labor organizations on their supervisory board and on their audit committee. The answer to that seemed self-evidently, "No, we're not going to do that."

We had to carve an exception to that. There are two handfuls of those kinds of things that we had to address in the audit committee rules. They are enshrined in the rules. We worked very closely with the Commission. We worked very closely with some representatives of foreign companies, both lawyers and business groups. The fact that I actually had a lot of experience with non-U.S. issuers was probably helpful in that regard because I knew that vocabulary. I knew what the issues were.

RC: Would you say that with the audit committee rules that international companies posed the greatest challenge? You're saying that the audit committee rules were extremely challenging. Was that mostly because of the foreign aspect of it?

AB: It was largely because of the foreign company aspect. Also, it was very much a sea change. It was one of the most important changes of Sarbanes-Oxley. The statute put the auditors under the direct control of the audit committee. It provided that the audit committee was made up entirely of independent directors. In effect, the audit committee became the final overseer with respect to financial statement issues, not the CFO, not the outside auditor.

The substantive changes in thinking that that this new approach required and making people get their arms around that as part of the rulemaking process and making sure that the corporate community, the auditing community understood what we were doing, that was challenging.

RC: How had things operated before?

AB: Auditors were hired, fired by the CFO, or the CFO and his or her team. The audit committee at well run companies kind of knew what was going on and at less well-run companies I dare say didn't know much about what was going on. They had no formal required responsibility for supervising the auditors. There were some things in the listing standards, but they weren't much. Most of the listing standards that tied to the role of the audit committee came in late 2003 as a result of Sarbanes-Oxley and everything that happened post-Enron. That was a sea change.

RC: How much did you work with the exchanges on changing those listing standards?

AB: That was a long process. It was probably longer than it should have been. Part of it was we were so busy dealing with Sarbanes-Oxley. I would say sometime by the end of February 2002, Harvey Pitt had written a letter to the NASDAQ and the New York Stock Exchange saying, "we need a robust review of listing standards in order to improve corporate governance in the aftermath of Enron." They came back with something. It took us a little while to get our arms around what they'd come back with.

We operated under the premise that we wanted them to be largely the same, but we were not going to dictate to NASDAQ and the New York Stock Exchange that they had to be identical. There was this three way discussion that took until late 2003 to come up with those listing standards. They ended up being an important part of the overall mix even though it took us a little while longer to get them into place.

Internal control was also an important part of the overall mix. That was actually one of the few provisions of Sarbanes-Oxley that didn't have a deadline to it. We tackled it later. I don't mind admitting that I think it was probably a rim shot at the end of the day as opposed to a bull's eye. I don't think we missed the target. I think the SEC rule was actually fine. I think the original PCAOB standard was susceptible to having more work than was probably necessary done by the accounting profession. We know that that's exactly what happened.

Part of it was the environment. No auditor wanted to be the next Arthur Andersen. So they were really, really, really being careful. It's settled down now. I view the internal control provision as a very important advance in the world of financial reporting. I really do believe that especially for large and more complex companies—because controls I think are more important the bigger and more complex you get. Especially with large companies, I think if you talk to people who are internal auditors and most people who sit on audit committees and boards, they will tell you that their numbers are more reliable than they used to be.

RC: You said the original SEC proposal was fine. What changed from the initial SEC proposal going forward?

AB: I think the SEC rules as adopted were fine. What the SEC rules did though was that SEC had to establish the PCAOB. Then the internal control rules authorized the PCAOB to set up an auditing standard. The rules were pretty open-ended as to what that auditing standard could be. Certainly AS-2, which was the original internal control auditing standard, and AS-5, which is the current internal control auditing standard that replaced AS-2, both of them fit comfortably within the SEC rules.

RC: Was there something beyond those that people would see as too burdensome?

AB: I'll give you an example of what was as much a change in environment as anything else. In the accounting world, there are two categories. There's "remote." Then there's a line. Then there's "reasonably possible."

RC: These are that an event will occur?

AB: That an event will occur. The original AS-2 said that something had to be taken into account in evaluating the internal control environment unless the chances of it occurring were "remote." AS-5 says something has to be evaluated for purposes of the internal control environment unless it's not "reasonably possible." Those are identical because you've got a line between "remote" and "reasonably possible." You're either on one side of the line or on the other side of the line. However, there is no doubt in my mind, and there is no doubt in the minds of everybody whom I've talked to who is knowledgeable in the area, that the first standard led to much more work than the second standard.

RC: Why?

AB: I think there are two reasons; one, because unless it's "remote" sounds worse than unless it's not "reasonably possible." We're not going to think about what the words really mean under the rule. We're going to just get scared. Secondly, the environment changed. In 2004, 2003, everybody remembered Enron. Everybody remember Andersen. The rule was being administered very strictly. By 2008, I'm not saying the standard wasn't administered strictly because I think the PCAOB continues to administer it strictly, but the world was a different place. I promise you that that the change in language produced a change in behavior. While it should not have been consequential, it was.

RC: Can you tell me a little about the Small Business Advisory Committee?

AB: That was something that Bill Donaldson wanted. Actually, let me step back. I served under three chairmen. Harvey Pitt appointed me. Bill Donaldson came in early 2003. Chris Cox came in the fall of 2005, I think, September. I served under the three of them. I left in February '06. Bill was very concerned, as was I, this was certainly his initiative. Sarbanes-Oxley—particularly internal control rules but other rules as well, plus some things that had been in place since well before Sarbanes-Oxley, unnecessarily burdened small companies and interfered with capital formation for small companies.

Bill said, "Let's take a fresh look." The result was we established an advisory committee, which actually reported after I left. I had a lot to do with setting it up, populating it, getting it started. A Chicago lawyer named Herb Wander was one of the co-chairs and a businessman in Indiana named Jim Thyen was the other one. I think if you look at their report, my own view is that it's an eminently sensible report. Some of it has been implemented.

Application of the internal controls auditing requirement was certainly pushed out and pushed out and pushed out for smaller companies. Under the JOBS Act, the auditor attestation requirement was eliminated for smaller companies. I'm not sure in a perfect world that's where I would have ended up. I understand the point. Some of the capital formation issues were also addressed by the JOBS Act. Frankly, some of the capital formation issues were addressed by securities offering reform while I was still there.

Under Mary Schapiro with Meredith Cross as director, they established another small public company or a Small Business Advisory Committee. It's a recurring theme because it's a long term real problem. We have a system which by and large treats ExxonMobil and Microsoft the same way it treats very small public companies. That's not necessarily a sensible policy.

RC: Going back to some of the Sarbanes-Oxley related rulemaking, did you find that companies were readily compliant with it, or was it something where the changes were hard to effectively enforce? Maybe enforce isn't the right word.

AB: Other than the internal control requirement, I don't think there's very much in Sarbanes-Oxley which is burdensome. I think corporate America recognized that. When the tenth anniversary of Sarbanes-Oxley occurred, I was on several panels. One of the recurring themes was it's time to repeal Sarbanes-Oxley. It costs far too much more than it's done good. When you actually drill down on that, it was essentially entirely about the internal control part. You will not get me to say that the internal control requirement wasn't too burdensome the way it was originally implemented.

I agree. I think it was. I'd like a do over. (Laughter.) The audit committee thing required a very significant change in mindset, but it wasn't burdensome. It produced grumbling. I think CEO/CFO certification produced grumbling. "I'm too busy to have to read that 10-K. That's not my job." As Warren Buffett and I agree, it is your job.

RC: It is now. (Laughter.)

AB: It always was. I'm pretty confident I'm on the right side of history on that one.

RC: I think we have a few minutes left. I'd like to talk to some of the other things that happened while you were in Corp Fin because you did get to some of the capital formation, especially some reforms in the IPO rules.

AB: Let me try to address quickly three things that we did when the dust settled on Sarbanes-Oxley. The first, in 2004, was to establish the first set of registration and disclosure rules for asset-backed securities. We don't have enough time to do that whole subject justice but asset-backed securities have been with us since the late 1970s. It started with some bank pass-through certificates and then Fannie and Freddie. Rather than have banks buy and hold mortgages, banks were going to make mortgages and then dispose of the asset into the capital markets with a Fannie or Freddie guarantee. That's the way Fannie and Freddie work. By the 2000s, mortgages that didn't comply with Fannie and Freddie standards were sold as "private label" pools into the capital markets. And other assets – credit card receivables, car loans, student loans as well as mortgages – were being securitized and sold into the capital markets. By 2004, issuances in the asset-backed securities market were larger than the corporate bond market.

What had developed at the SEC before 2004 was a patchwork of non-rules based processes for offering asset backed securities in the public markets. It was largely based on no-action letters or it was based on informal negotiations between people at Corp Fin and people in the outside world. It wasn't rules-based. It had exactly zero potential for effective enforcement. Frankly it gave the high priests in the bar who were in the know an advantage over people who would read rules but didn't know the right people to call.

We really didn't change the requirements all that much. We did tinker with the requirements around the edges. We made them more stringent in certain respects. What we really did was just codify the process that had been there. I don't think the aspect of the financial crisis related to subprime mortgage backed securities would have been significantly different if we hadn't done it.

Except, I think there would have been even less ability to enforce disclosure requirements. There has been limited enforcement action by the Commission in the area.

I dare say that without Regulation AB, there would have been none because there would have been nothing to enforce. That's what we were trying to do there. I think there is some misapprehension that we had some grand scheme. We really didn't. We primarily just wanted to codify the existing rules and put them down on a piece of paper.

Securities offering reform was more ambitious and had some real objectives; the two principle objectives, one of which does relate to IPOs but also to other offerings. The world of 2005 and certainly today, you can't regulation communication the way you could regulate communication in 1933. You can't say to somebody, "You can't use the Internet to communicate." You can but it's like King Canute.

RC: (Laughter.) Exactly.

AB: What's a 21st Century alternative that we had exemptive authority to deal with that would allow communications to continue in a more normal way, but which didn't leave investors unprotected? The solution was hardly original with me or with us, but we were the ones who got it finally implemented, was that we were going to use the '33 Act liability standard around written communications or "prospectuses."

The problem under the pre-securities offering reform rules is that with very narrow exceptions, the prospectus has to be the statutory prospectus that's included in a registration statement. Any other writing is per se illegal and gives the recipient a put, a strict liability put, against the seller. What we did was say, "You can have writings.

We're going to call them free writing prospectuses. In some cases, they have to be filed. In other cases, particularly where they're prepared by underwriters, they don't have to be filed.

You're going to take the same '33 Act liability for those as you're going to take for the statements you make and the prospectus that's in the registration statement, which means if you've made a statement, you have to be able to demonstrate that you've used reasonable care to convince yourself it's correct or if it's not correct, you're liable for it." Essentially the same due diligence defense as you have for registration statements. The words are a little different. The substantive impact is essentially the same.

That's one of the things we did. We made the rules around writings consistent with an electronic age. Something that's done by e-mail is a writing, but you can also take advantage of it as a writing that's been delivered. A byproduct of this and I think the thing that actually gave us some political impetus was the Google offerings which happened as we were working on this, when the two Google founders did the interview with *Playboy* that was published as the IPO was about to price.

I must tell you, four years earlier, the consequence of that would have been they have to delay the offering for forty days. When I heard about it what I said to the staff was, "We've got authority. Make them put it in the prospectus. Make them take liability for it." The issuer said, "Why should we do that?" I said, "Because the right answer is that you're going to take liability for it and we're not going to hold up the offer." The new rules are completely consistent with that correct outcome. The issuer takes liability for the writing but it's not an illegal, prohibited event.

The second thing we did, which I think may even be more important than what we did around IPOs (although if the IPO market ever becomes super robust again, my words will be wrong), was that we deregulated the capital formation process for large seasoned companies, so-called well known seasoned issuers or WKSIs. The new rules for WKSIs are essentially immediately effective registration statements, pay as you go fees, no Section 5 gun jumping restrictions. You don't have to worry about saying something before you file the registration statement.

The registration statement can be two pages long. You add all the rest of the disclosure when you do the deal. The guiding premise was simply all the disclosure and anti-fraud and all of those protections remain exactly the same as they were before, but the various speed bumps, some of which were no more than traps for the unwary, are removed. You get the regulatory process out of the way of the process of raising capital.

If a big company on Tuesday decides they want to raise money on Wednesday, they can do that, assuming they don't have something they've got to tell the market. If they have something, then they've got to tell the market and then they've got to wait until it's in the market and then they can go. Assuming a company has an up-to-date disclosure record and on Tuesday they decide they want to raise money on Wednesday, there's no earthly reason that a regulator should stand in the way of that. That's the premise behind securities offering reform.

We did one other thing which is complicated but worth mentioning. The way the liability regime worked, or was conventionally thought to work, the registration statement is the key liability document. Accuracy of the registration statement is tested on effectiveness. That rule ceased to work once we had shelf registration. It was made effective months before, often at the time of the most recent 10-K annual report filing by the issuer.

You also had the problem that the final prospectus, which was the liability document, actually or constructively included in the registration statement, was not delivered to the investor. It was put in the mail before closing, but there was no effective practical way under this liability construct to ensure that the investor actually knew what was in the final prospectus when the investor three days earlier said, "Yes, I'll buy." What we did was: one, we adopted what we called an interpretive rule. I think it's an interpretive rule because I think the statute always should have been interpreted this way.

A contract of sale is a sale under the statute. When I say, "Yes, I'll buy," that's a sale. The combination of prospectuses and oral statements that a purchaser has received when he or she says, "Yes, I'll buy," is the package of information against which disclosure liability should be tested. If you haven't told me something then and you put it in a final prospectus that gets filed three days later, that's not part of the record that I should have to prove was wrong. That's a very important change. We did that as part of securities offering reform.

The securities offering reform was one of the things that I had gone to the Commission hoping that we would be able to do. While I had been there, it became evident that it was probably time to take another look at the executive compensation disclosure rules that are, for most companies, part of the proxy statement requirements. They had last been overhauled in any significant way in 1992. It was partly passage of time.

There was also some growing investor dissatisfaction with the rules. It's interesting because if you look at the major focus on executive compensation today and say-on-pay and so forth, it was certainly not part of the landscape when we started looking at this in 2005. I don't think we had any idea that we were sort of at the beginning of a tsunami in terms of the importance of the topic.

The objectives of the exercise were in fact relatively modest when we started. First of all, the old rules, because they talked about salary and cash bonus compensation, including incentive cash, in dollar terms but equity compensation in share terms, it was apples and oranges. Probably the single most common criticism we heard was that there wasn't a total. You couldn't tell whether Mr. Smith and Ms. Jones were making more or less or the same amount as each other. One of the priorities was, let's have a total. That turned out not to be as easy as it might sound, because we had to do something about a methodology for the equity piece of compensation in order to convert it from shares to dollars.

We didn't talk about it earlier but on my watch or when I was there—more with the involvement of the office of chief accountant, although I was somewhat involved—you may recall that we had put the expensing of stock options into place. There had been a great fight about it in the previous administration when Arthur Levitt was chairman and Lynn Turner was chief accountant. Congress ultimately beat back the SEC's desire to expense stock options.

Expensing of stock options in the aftermath of Enron and WorldCom and the financial fraud crisis was adopted, the so-called FAS 123R. What 123R provided was that fair value at grant of the options was taken as an expense in the company's income statement. That was a methodology that allowed us to turn equity grants from share terms into dollar terms. It was an economically justifiable methodology. It may not have been the best methodology for this purpose, but it was justifiable. Certainly, no one had the appetite to go back and fight yet another pitched battle to come up with yet another economic dollar based methodology to value equity incentive compensation. We adopted the 123R approach.

The one change we made, which was somewhat controversial and was actually reversed after I left the Commission and then re-reversed back to the original proposal when Mary Schapiro was chairman and Meredith Cross was director, was whether you took the entire value of the grant into account on day one, or whether you did as the accounting rule did and you expensed it over the period of vesting. If you had a three-year vesting period for financial reporting purposes, it was taken into the expense side of the income statement one third, one third, one third.

For purposes of the proxy executive compensation disclosure rules, we provided that you took 100 percent at the time of grant. The theory behind that was the compensation committee's making a decision about compensation today. Let's put it all in and evaluate the compensation decisions at the time they're made, or allow investors to evaluate them at the time they're made. That was one of the issues.

A second issue was that while back in 1992 it was clearly the intention of the rules to capture all elements of compensation; the rules are very detailed. An interpretive practice apparently developed at some companies. I don't think all, I don't even think most, but at some -- where if the element of compensation didn't fit in a box in the rule, it didn't have to be disclosed. Investors were quite convinced that that was happening. Frankly, some of the empirical things that we looked at suggested that it may have been happening.

When we were early on in this process, I gave a speech out in San Francisco to a compensation based conference in which I said the existing rules have to be interpreted that "all" means "all." Those were not my exact words. That was the gravamen of the remarks. When we put out the new proposed rules, we made sure that it was crystal clear that people understood that "all" meant "all." There was a column for "other." If you thought you weren't covered by any of the other columns, it went in the "other" column. Everything was covered.

RC: You're talking about perks and things like that.

AB: No, I'm not talking about perks.

RC: You're not talking about perks?

AB: I'm not talking about perks because perks (or so-called perquisites) was actually the third thing I wanted to mention. There is a column for perks. I don't think we changed the substance of the rules about perks at all, but as with "all" means "all," we reminded corporations as to what the reporting rules really were. If you look at the releases, the words in the rule don't change very much but the releases provide some gloss, which makes it crystal clear that the perk disclosure was perhaps not as good as it could have been as we got further away from 1992 and it was time to come back to first principles.

We did a few other things. We added some tables. There's a great struggle in thinking about how to have companies disclose executive compensation. There are myriad ways to pay executives, and companies have lots of different ways of doing it. It's important to understand these are disclosure rules. We were not passing judgment on either the amount or the type of compensation. We were trying to get investors the clearest possible picture of compensation. Investors may disagree that we did a very good job and that it's all too complicated and so on and so forth, but that was the objective.

There is a choice to some extent between letting companies tell their own story as to what they think it is they're doing and comparability. If you let ten companies put the numbers out in the way they want, investors will find it very difficult to compare those ten companies. Whereas if you have a standardized set of tables, investors will be able to compare those ten companies. The companies will then say, "Yes but you're not allowing us to explain why our numbers in that table are different from somebody else's numbers in that table."

The way we dealt with that was really two-fold. One, we encouraged additional disclosure around the tables with footnotes and so forth. Two, we introduced a new concept. This is the other big thing about our new executive compensation rules – we required a section entitled compensation discussion and analysis, or CD&A, which we mandated for all but the smaller companies. The theory was that companies were encouraged to tell their own stories as to their compensation philosophy in CD&A.

CD&A, just to drop a footnote, has become a hugely important element of the current debate over executive compensation because it's become the centerpiece of the say-on-pay vote. Obviously the amount is an important element of say-on-pay, but compensation philosophy is a hugely important element, and CD&A is where companies are now articulating their compensation philosophy. None of that existed back in 2005. We really weren't writing those rules with that context necessarily in mind.

That's what we put out. It was actually pretty well-received. The open meeting at which the Commission approved the publication of those rules for comment was the last thing of moment that I did at the Commission. It was about two weeks before I left. My successor, John White, took the final rules through the Commission where they were voted to be approved. They weren't very different from what we proposed. That was kind of it.

One of the things I didn't talk about, it sounds like all we did was rulemaking and so forth. Very quickly two other things; one, we put out a very important interpretive release at the end of 2003 about management's discussion and analysis in MD&A. Linda Quinn had published a release or had had the Commission publish a release in 1989 that's kind of the seminal discussion of what the Commission was trying to do with MD&A. It's also an interpretive release. This was the logical follow-on. Fourteen years later we'd had lots more experience. This was a very important disclosure release around quality of financial disclosure.

RC: What were you trying to add on to what Linda Quinn had done?

AB: We weren't trying to add on. Indeed, in some ways we were trying to subtract because what we were trying to do was get the focus on the more important elements of financial reporting and stop the rote "You have to talk about everything" and stop the rote "This went up by 1 percent, this went down by 2 percent, this went up by 4 percent" and get more focus on which of those is important and then tell us why and how.

RC: What does it mean?

AB: What does it mean, exactly. Two other important things we did, we encouraged the inclusion of an executive summary. That is now pretty much universally followed. It was not in existence as a common tool before this release. I think most companies, certainly most large and complicated companies, now use an executive summary. The purpose is to say, "These are the two or three or four things you really ought to know about how this company operates, how it makes money, where it was in trouble last year" and so on and so forth.

Secondly, we put a focus on liquidity. MD&A had turned too much into a focus on income statements. Income statements are obviously important. Net income is an important number, but liquidity is hugely important. One of the things that is well known but that we learned to emphasize in our approach in the course of the financial crisis is that companies don't go bankrupt because they don't make money. Companies go bankrupt because they run out of money. That's a liquidity issue, or they run out of cash, and that's a liquidity issue. We focused in on liquidity.

The other thing we did was we frankly encouraged companies to start with a clean piece of paper every year and not put stuff in this year just because it was there last year. Don't be afraid to leave things out, I'm not sure we used the term in the release, but we certainly used the term internally; don't be afraid to leave things on the cutting room floor if they're not material. We don't want to see them in 2007 just because somebody cared about them in 2002. Yet the trend had been, and the lawyers do think this way, if you put it in, you have to move a mountain to get it out. In fact, maybe nobody cares one year later or two years later.

That was what that release was all about. It was very significant.

The other thing I just wanted to mention because we've talked for quite a while about what the division does. The most important thing the Division of Corporation Finance does day in and day out is review the filings of registrants. The division was 320 people when I started. It was 400 and some odd when I left because we got some money. Way over half and probably more on the order of 70 to 75 percent of the personnel are in the operations division.

The job of the operations division is to review filings, send out comment letters, review the comment letters, chase issues to ground, and improve disclosure. That really is the engine room of the division. While all this other stuff was going on, every day people are reviewing these filings. The director obviously doesn't get involved in any very significant number of them, but the important issues do make it up to the director's office. People talked to me about them.

In terms of my thinking about what's going on in the division, all the other stuff may be taking more of my time, but that's what's really driving quality control in the division with registrants. If we stopped reviewing, we would have no quality control mechanism that I would have and my successors would have. We shouldn't leave off talking about my time at the Commission and the Commission without focusing on how important the operations piece of it is.

RC: Unless there're other things you'd like to discuss, the only other things I could think of were you made advances in putting the proxy statement on the Internet, making things more available online.

AB: We provided for Internet delivery of proxy statements. We lived in a world where investors saw their 10-Qs and their 10-Ks and their 8-Ks and their 20-Fs all online. Investors can ask a company to give them a paper copy. It's a relatively rare occurrence. Yet, proxy statements lived in the paper era. Part of that was just logical inconsistency, but frankly, part of it is for a large company with a large shareholder base, the paper regime cost could be a low eight-figure number. While that might be good for the U.S. Postal Service and for the printers, it's not good for the issuer community. What we decided was we'd give companies the option to go electronically.

Interestingly for the first few years, not a lot of companies did or many still did not. I think if you go out and look today; a very significant majority of the companies now operate in the electronic delivery mode. Investors can ask for paper. Some do. I don't think we've damaged the system of shareholder voting by going to electronic delivery. We've saved some trees. We've saved some money. It was as simple as that. That's really what we had in mind. The U.S. Postal Service was not happy with us.

RC: (Laughter.) I guess not when you take a couple million pieces of mail out of circulation.

AB: Couple of million? Gazillions of pieces. That was what that was all about. I suppose I could mention one other thing. Way back in July of '02 when the Enron and WorldCom stuff was at its frenzy, the White House and Treasury had, not for the first time and not for the last, thought about Fannie and Freddie. This was before Fannie and Freddie and the financial crisis. Fannie and Freddie, at the time, they were profit-making.

We can maybe talk about that in a little while because I've had some involvement with that. They made tons of money. They have shareholders or had shareholders other than the Treasury. They were listed on the New York Stock Exchange. Yet their securities were a class of exempted securities. They didn't file with the SEC. There was no one who was policing their financial reporting and their GAAP. They were under pressure elsewhere. We were not the source of the pressure.

At the end of the day in July of 2002, we negotiated, and it was really Corp Fin and the chairman's office, negotiated a program whereby Fannie and Freddie would agree to voluntarily file under the 1934 Act, not register their securities offerings under the Securities Act but they would file their periodic disclosures.

They would file 10-Ks, 10-Qs, 8-Ks, CEO/CFO certifications. Their auditors became subject to all the rules that every other public company auditor became subject to. Fannie in fact registered with its annual report for 2003 at the beginning of 2003 for its results for 2002. Freddie started the process but in fact did not register until the summer of 2008.

RC: That's interesting timing for that. (Laughter.)

AB: We did accomplish that. I testified in Congress a couple of times about Fannie and Freddie. We also, as I was leaving, did the same thing with the Federal Home Loan Banks. They became voluntary registrants. In both cases, the federal regulator, in the case of Fannie and Freddie what was then OFHEO, what's now the Federal Housing Finance Agency or FHFA. In the case of the Federal Home Loan Banks, I have forgotten the name of the regulator of the Federal Home Loan Banks.

RC: Not the Home Loan Bank Board, is it?

AB: It may be. In fact, it was the Federal Housing Finance Board, and is now also FHFA. In both cases, their regulations now require SEC filings. In the case of the Federal Home Loan Banks, we negotiated that with the Board. Then the individual banks came in, another little thing that kept us busy for a few months.

RC: What made you decide to leave the SEC when you did?

AB: If you had asked me in 2002 how long I would have been there, I would have given you a number that was lower than four years. I didn't know one way or the other. In effect, one thing led to another. I did really want to do securities offering reform before I left. We got to the end of securities offering reform about the same time that Bill Donaldson stepped down as Chairman. That in effect probably delayed my departure a little while because Chairman Cox came in.

It seemed the right thing to do to be around for a little bit. Then we got into the executive compensation stuff so I decided to finish preparing that. If you'd asked me in early 2005 would I be gone by the end of 2005, I would have probably said, "Yes." The way events transpired it ended up being February 2006. I actually had a very interesting time. In retrospect, what I ended up facing was not the job I took. It turned out from my perspective to be much more interesting than the job I took.

RC: It certainly wasn't what you had expected.

AB: It was not. It was more challenging, but it was more interesting. At the same time, there's a burnout factor. I was commuting. That was probably part of it, although I don't think that made a huge difference. I think it was just time to go.

RC: Did you always know you'd come back to Cleary?

AB: The one word answer to that is no. I was not looking to leave Cleary when Harvey Pitt called me. As I mentioned earlier, I thought I had the best job in the world. I now think I had the second best job in the world. I always had thought that. The chances that when I came back out and looked around that Cleary would be a very attractive alternative—there was no doubt in my mind that that was going to be the case. It, in fact, was.

The biggest question for me was whether I wanted to go in-house as a general counsel. I actually did think somewhat seriously about that and reached the conclusion that I'm better at doing at what I do than I would be at being a general counsel. I don't think of myself as a great manager. I like some of the independence that being outside counsel provides.

That took a little bit of soul-searching. I'm confident I came to the right decision. I have enormous respect for people who do general counsel jobs. I think it's unbelievably difficult and it's only gotten more difficult, but I also am convinced that I made the right decision, that I would not be as good at it as they are. I looked around a little bit at other law firms.

I didn't go to the SEC because I was building a resume. I had a very established practice and a very established place in the legal community. To go back and be able to build on that with people I knew and respected and had a great deal of frankly affection for, as opposed to going off and starting something all over again, maybe it's lack of drive or lack of confidence. I don't think so. I think I just knew myself pretty well, and so I decided to go back.

RC: If we have time, you mentioned when we were talking about Fannie and Freddie you were involved in some of the events at the Treasury.

AB: I did deals when I was younger and pretty much before I went to the SEC, I did IPOs, very significant IPOs. My practice now is largely non-transactional. I consult on a lot of transactions. People call me up with specific questions, but I don't really do the transactions. I do a lot of advisory work. I do advisory work for general counsels. It's one reason I respect them so much and think of their job as so hard. They have to talk to people like me.

I talk to CFOs. I talk to CEOs. I talk to boards, advise them. I certainly advise audit committees and auditing firms on audit and accounting issues. It's something that if you'd asked me in 2002 whether I ever would have had enough of an accounting and auditing background to have that as part of my career, I would have looked at you as if you had two heads. In fact, it became a very significant part of what I did at the Commission because of what I walked into.

RC: You got a crash course in it.

AB: It has become a very important part of what I do. Two of the more interesting things, the worst month of my professional career, but it was certainly interesting, we were asked and I was asked to advise the financial advisor to Treasury in the conservatorship—in taking Fannie and Freddie into conservatorship. In the summer of 2008, concluding just before Labor Day or maybe right around Labor Day, we were involved in that. I saw the next step that Fannie and Freddie would not just be regulated and not just being whacked, in the case of Fannie, being whacked by the SEC because of their derivatives accounting, but taking them into government conservatorship.

Then two weeks later I found myself representing the FRBNY, the Federal Reserve Bank of New York, in the bankruptcy of Lehman, which was interesting and immensely frustrating and difficult because certainly from my perspective, you read the papers and "Something could have been done and blah, blah, blah." I've got to tell you from the inside of the Federal Reserve Bank of New York, by the end of that weekend it didn't look like anything could be done.

I was involved in that. Two things I'll never forget although I don't remember them as being happy victories in either case. I mean Fannie and Freddie, Treasury succeeded in doing what had to be done. Lehman just ended up with no alternatives.

The advisory work and counseling is what I've been doing since then. I do a lot of speaking. I'm on the board of directors of the Travelers Companies, which is an enormously interesting thing to do.

[End of Interview]