

SEC Historical Society Oral History Project
Interview with Richard Nesson
Conducted on June 4, 2012 by James Stocker

JS: This is an interview with Richard Nesson for the SEC Historical Society's virtual museum and archive of the history of financial regulation. I'm James Stocker. Today is June 4, 2012. We're talking at Luness Enterprises' offices in New York City. Mr. Nesson, thanks very much for talking to me today.

RN: You're welcome.

JS: First of all, just to start off, where were you born and where did you grow up?

RN: I was born in Cambridge, Massachusetts and the first eight years of my life I lived in a section of Boston called Brighton, Massachusetts. Then we moved to Newton, Massachusetts, where I continued to mature. I went to Newton High School. I graduated in 1960.

JS: While you were in high school did you already know that you wanted to be a lawyer when you grew up?

RN: Not at all, although my dad was a lawyer. He was a general practitioner. I was very close to my parents and obviously was very influenced in that direction.

JS: What did you think you were going to do? Or did you have a clue?

RN: I had no idea. My father was a general practitioner. In those days, having lived through the Depression, he would take whatever business came in the door. He never started out any year knowing where his revenue was going to come from. That kind of practice of law was on its way out. It was not something that I really aspired to at that time. I had no idea what I would do as a lawyer.

JS: You went to Harvard as an undergraduate?

RN: I went to Harvard College, and then went on immediately after I graduated from the University of Michigan Law School.

JS: What was your major as an undergraduate?

RN: I majored in government.

JS: When did you decide to go to law school?

RN: I was thinking about it while I was in college and pretty much made the determination in my senior year.

JS: You applied to law school while you were a senior, and then started the next year, or was there a period in between?

RN: Yes, exactly. That's what one did in those days. We were already very involved as a country in the war in Vietnam. I'm not sure whether getting drafted would have been an issue at that particular time. It did become one later on.

JS: What year did you start law school?

RN: I started in 1964.

JS: You went to the University of Michigan?

RN: Right.

JS: Any particular reason you wanted to go to Michigan? Or did you just apply to a lot of places, get in there and that was the best option?

RN: That's pretty much it.

JS: So it goes. Did you have a focus on business law or securities law or anything like that?

RN: No, not at all. I took a corporations course. I don't believe I took a course in securities. I was interested while I was there in taxation courses, and I seemed to do well in them. When I got out of law school, that was a focus of mine.

JS: What was your first job after law school?

RN: Before I got a job, I went into the service. I was very fortunate that I was able to avoid the draft, and got into a unit of the Army Reserves. I went in right after I took the bar exam in July of 1967. I went into the Reserves, and went to basic training, which was a four month commitment, and got out in November of 1967 without having made any plans beyond that.

I started roaming around the city of Boston, trying to get interviews with law firms that had already made hiring decisions for that year. I did that for about three or four months and then decided maybe I'd better look at Washington as a place to go, with the idea that I would come back to Boston at some point.

JS: Where did you end up in Washington?

RN: I ended up at the Department of Housing and Urban Development. Actually, it was the Federal Housing Administration. I'm not even sure at that point if it was part of HUD, but that's where I started. I started in February of 1968 at the FHA.

JS: What sorts of issues were you working on there?

RN: I don't know whether I would even have called them issues. I was in an office that was the general counsel's office with about four or five other lawyers. Basically what we did is on an occasional basis review documentation relating to the transfer of FHA guaranteed properties from one owner to another. There was not a lot of work to do. When you did get a file, essentially all you had to do was just make sure that the forms were correctly filled out.

We all spent a lot of time doing other things. I recall that doing crossword puzzles was a major activity. I remember one could get annoyed when a piece of work actually came in and disturbed your train of thought on crossword puzzles. I needed to get out of there. (Laughter.)

JS: I was going to ask you what motivated you to leave that cushy position. But in any case, you ended up at the SEC within a couple of years, right?

RN: Right. During the time that I was at the FHA, I started in a Masters of Tax program at Georgetown, and did take a securities course. I did enjoy that. I was aware that the SEC was a premier government agency with a great reputation. I applied to the SEC and was lucky enough to get in there. I think I started in June of 1969, something like that.

JS: Was there any sort of training given to you or were you just thrown on the job?

RN: No training that I can recall. I was placed in the Division of Corporation Finance in an enforcement unit called Investigations and Administrative Proceedings, and basically learned from the more senior lawyers in that group, especially John Bernas, as to what it was I was supposed to be doing.

JS: You said you had done a master's in tax preparation, right?

RN: Right, I never completed it.

JS: But at least you had some background on financial issues when you got in.

RN: Sort of.

JS: How would you describe the level of knowledge of these different specific tax and other financial issues among the Division of Corporation Finance at this time?

RN: There were certainly people, principally in the reviewing branches, that had a very good understanding of financial issues and disclosure issues. In the unit that I was in, we would get our cases referred to us by people in the reviewing branches. Gradually, over time, I became a little bit more familiar with the financial issues.

JS: Were you involved in enforcement actions at this time?

RN: I was. No biggies. There were several people in the unit that worked on the National Student Marketing case. I just had a tangential involvement. That was probably the biggest case that came up during the time that I was in that unit. The fellow who really led the charge on that was a lawyer by the name of Dave Belkin and when the Division of Enforcement was created, in 1972, Dave went down to Enforcement and that's where the case eventually was resolved.

JS: Can you give me a little background on that case? What was involved there?

RN: It was basically financial fraud, accounting for very "iffy" transactions. That was the case ultimately that involved sanctions against individuals in the accounting firm, as well as an attorney.

JS: I understand that there was a huge pretrial discovery program in that case. Many witnesses provided testimony. Were you involved in that at all?

RN: Just tangentially. I think much of that occurred down in the Division of Enforcement.

JS: In 1972 there was an organizational restructuring within the SEC and a lot of these Enforcement branches got consolidated into one Division of Enforcement. How did that look from your perspective?

RN: From my perspective, that was fine, because I didn't really want to do that any longer at that time. I was lucky enough to be one of the three lawyers from the Investigations Branch in CorpFin that was retained in CorpFin, and I got to work on some public proceedings at that point. I'm not sure that we had a name for the group. I think eventually it became the Office of Disclosure Policy under Dick Rowe.

JS: From your perspective, was this a logical restructuring? To have all the enforcement people under one branch?

RN: I think it made sense from the point of view of the Commission. I'm not sure all of the people in CorpFin felt that way. We were a small branch. We were available to the reviewing branches. There may have been some concern by the reviewing branches that if the function were down in Enforcement Division that maybe their concerns would not be addressed as quickly, but I don't know.

JS: You said that you were happy that you stayed within CorpFin at the time.

RN: I was. I really enjoyed working for Alan Levenson, who was the Commission director at that point.

JS: Did he hire you?

RN: No, Alan did not hire me. I guess the division director then was Charlie Shreve. I don't know who was, frankly, responsible for hiring me. It may have been the head of the branch that I referred to is a fellow by the name of Ralph Tracy. Ralph was replaced by Dick Rowe, when Dick came back from California along with Alan Levenson, I guess early in the seventies.

JS: Tell me a little bit about Alan Levenson.

RN: I really liked Alan quite a bit. He was really a great guy. He was an incredibly smart guy, and very generous with his time. He was somebody that did enjoy spending time with junior attorneys and trying to show them the right way to do things. He was a terrific guy. He passed away a few years ago. I know a lot of people really miss him.

JS: Then in 1975, Richard Rowe took over as director of CorpFin, right?

RN: Right.

JS: How did their personalities compare?

RN: Alan certainly was more outgoing. I think Dick was probably more soft-spoken than Alan. But Dick was very effective and when Alan was the division director, I think he relied on Dick to a very large degree. Dick was a very smart guy and really understood the law.

JS: After the restructuring, you stayed in CorpFin. What sorts of issues were you working on at that time?

RN: I was doing work for Dick. We did the public investigation on hot issue securities markets. That was fun. At the end of the day I don't know that the Commission ended up with anything too terribly significant. We did propose, and the Commission adopted, changes to the prospectus disclosure requiring more up-front disclosure of risks. I think there was some effort to get the SROs to do something in the area of due diligence, free-riding and so forth.

I do recall one hearing that we had during that period of time, when we had an underwriter from a company that I think was called Metropolitan Quarterback that was one of these fast food franchises. They made hamburgers. I remember asking the underwriters' representative, "What did you do by way of due diligence?" He said, "Well, basically the only thing I did was eat one of their hamburgers without ill effect." Clearly there was a need for something further in the due diligence area.

JS: Were you also working on the issue of corporate earnings projections?

RN: I did. That was another public proceeding that we had, where we ended up proposing actually some fairly formal requirements, giving companies an opportunity to disclose projections of earnings, but requiring that if they did that then they had to follow-up

periodically with modifications to their projections. There were quite a few additional conditions that I think ultimately led the Commission not to adopt those recommendations.

JS: Were you also involved in the SEC's voluntary disclosure program?

RN: Just barely. I think at that point I was no longer doing the public proceedings. I went on in CorpFin to the reviewing branch and then subsequently, I worked for an assistant director. There were certain companies that we had responsibility for reviewing who were coming into the Division of Enforcement to do a mea culpa.

I recall one instance. I think the company was called Castle & Cooke. They were involved in importing bananas. I remember them coming in and saying that they, like other importers, had paid off the dock hands in a particular foreign country. They admitted that they disclosed it on their books as "first cost of fruit", something like that.

I remember that example and other similar examples that were brought to Alan Levenson's attention causing him to conclude – and finally to get the Commission to conclude – that although the amounts were not material in economic terms, that falsification of books and records in that fashion, in and of itself, was material and required some action by the Commission.

JS: So that was material and required some action. Just to use a specific example of money paid to dock workers, for instance, to unload goods. I think in the final legislation on the Foreign Corrupt Practices Act, something like that would be considered a facilitating payment, right? And it would not be specifically banned by the Act.

RN: That's correct. But the falsification of books and records continue to be a problem, and continue to be a violation under the Act.

JS: So there was a lot of discussion within the Commission at this time about what should be legitimate, what is illegitimate, what is material, what is not material.

RN: Then, of course, what the Commission may have proposed did not necessarily make it through the legislative process.

JS: You also worked on the Robert Vesco case too, right?

RN: I will refer to an interview that was done – I'm not sure by you – with Dick Rowe, which is in the museum. Dick refers to this as well. What Dick said is that he was summoned to Stanley Sporkin's office. There was a deposition to be taken of Robert Vesco concerning International Controls. I guess I was summoned by Dick, because I remember being there as well.

Robert Vesco, first of all, he looked like a riverboat gambler. It's probably a look that was intentional. He had a mustache. He had slicked back hair. He was, during the course of this deposition, certainly the most arrogant and the most disdainful of the staff of any witness I've ever seen at the Commission. He was so disdainful that at one point he took his shoes off and he stuck his stocking feet up on a chair, which happened to be very close to where I was sitting, and I can tell you – (laughter) – that was not a pleasant experience for me.

The other thing I remember, and Dick refers to this in his interview as well, is that we reached a point where we were going to go off the record and perhaps break for lunch or something like that. Before we broke – but were off the record – Robert Vesco said to Stanley, “You know, I really like your house.” Stanley said, “What?” He said, “Yeah, I have a picture of your house in Maryland.” Stanley said, “Well, what is that all about?”

Vesco said, “Well, I understand that you've had Interpol following me all over Europe and taking pictures of me, so I decided to do the same with you.” We then broke for lunch. We went back into Stanley's office, where Stanley went berserk and was talking about how “this guy was taking pictures of my wife, my children.” Clearly, Robert Vesco made an enemy for life.

JS: Now I understand that for a time you worked in the Office of Disclosure Policy, right?

RN: Right.

JS: What did that office do?

RN: I believe that the only thing that we worked on while I was there was the corporate governance project, which really took off when Harold Williams joined the Commission as Chairman. It was something of great interest to him. Ultimately we had a series of hearings around the country, New York, Los Angeles, Chicago and Washington, starting off, I recall, with Evelyn Y. Davis, who didn't need a microphone to make her views heard.

Anyway, we started with a set of hearings, and went out for comments on a large number of conceptual issues. We spent a lot of time whittling down the comments onto something that could be read and then proceeded with some proposals for the Commission to consider.

JS: I understand that at one point you were tasked with investigating Stanley Sporkin.

RN: Right. That was an interesting event. It was probably 1976 or 1977, and the Commission had received a complaint I believe from Adnan Khashoggi, who was associated with some registration statements that were being looked at by the Division of Enforcement. Mr. Khashoggi apparently accused Stanley Sporkin in a letter to the Commission of some kind of impropriety. I can't remember what.

Because Stanley was the Division of Enforcement Director and the Commission was obligated to investigate the allegations that were made by Mr. Khashoggi, it couldn't be done by the Division of Enforcement. CorpFin got it. Dick Rowe assigned then-Barbara Leventhal – now Barbara Lucas – and myself to investigate these allegations. We were both aware of Mr. Khashoggi's reputation and were very fond of and knew Stanley very well. I must say that our investigation of Stanley, which did include a very brief interview with him, didn't take very long.

JS: These were basically spurious charges, from your perspective?

RN: Correct.

JS: That's an interesting side note on the history of this period. You also served on the Task Force on Corporate Accountability.

RN: I served with Barbara and with a few others in the division, Mike Stakius, Jennifer Sullivan and Janet Zimmer. It was a public proceeding that was given impetus by Harold Williams, who was the Chairman at that time. We went out for public comment. We did a number of public hearings around the country. We interviewed probably between fifty and a hundred people.

JS: What was your specific role on the task force?

RN: Barbara was head of it. I was the deputy. We were basically tasked with getting all of these comments together in some form that the Commission could read and understand. Ultimately, we came up with a series of proposals for the Commission to consider. There were two phases to the investigation. The first phase involved proposals related, strictly speaking, to disclosure in proxy statements, disclosure relating to the independence of directors, the existence and composition of the nominating audit and compensation committees of the board, and things of that nature.

JS: Were any of these new rules actually implemented?

RN: Initially we were quite ambitious and the staff came up with a definition of “independence.” I believe it was shot down at the Commission.

JS: Do you remember what the elements of that definition were, in general terms?

RN: I think the basic elements had to do with the relationship of the director to the issuer. I believe we tried to define the term “independence” in terms of the absence of those relationships. As I said, I believe it was shot down by the Commission, principally because there was concern that if you weren’t deemed to be an independent director there might be a dispersion cast that you weren’t capable of independent judgment. So as I say, I believe it was shot down by the Commission.

I think the compromise was to go out with a proposal that probably had the same definition, but used the term “non-affiliated director.” That did go out for comment. There were comments on both sides of the issue and ultimately the Commission did not decide to adopt that proposal. I think what we ended up with was disclosure about the existence and the composition of members of the three key committees, as well as disclosure about the relationship of each director with the issuer, but without any attempt to characterize that relationship.

JS: Now your service on this task force, was that the last major accomplishment that you had before you left the SEC or did you do something else after that?

RN: There was one other phase of that whole project which involved changes to the proxy card itself. We did accomplish something. It’s probably more significant these days than it was at the time, but the Commission did adopt a proposal that gave shareholders the opportunity to vote not only for, but against individual directors.

As you may recall, prior to that time the only choice you had as a shareholder was to vote in favor of the slate that had been put up by management. There was no other choice. If you didn’t want to do that, you could throw your proxy card away.

JS: Yay or nay.

RN: Then similarly, we gave shareholders the opportunity to abstain from voting on certain proposals made by management.

JS: At that point in your career you left the SEC. Why did you decide to go somewhere else?

RN: I had been at the Commission for a number of years and had been through a couple of phases of the corporate governance project. There was one further phase which involved writing a report to Congress, and I figured that was going to take some period of time. If there was an opportunity for me outside with the Commission, it was probably a good time for me to look at it.

I had an opportunity to join the staff at the Municipal Securities Rulemaking Board as deputy general counsel. I started there immediately after leaving the Commission in 1979.

JS: Did you know much about municipal securities at the time?

RN: Not at all.

JS: What was the status of the MSRB at that point? Can you tell me a little bit about the organization?

RN: Sure. It had started in 1975 or 1976. The board and the staff had worked very hard to put together a set of rules – that the board was expected to adopt – for the municipal securities dealers and brokers. That part of the mission really had been accomplished. While I was there, we were working on enhancing some of those rules, and putting into effect an arbitration process for people that had problems with their municipal securities dealer. It was basically a period of time of rule enhancement.

When I eventually became general counsel, I think in 1980, I spent a lot of time dealing with the board. For example, the board met every other month. The minutes were quite voluminous. I needed to make sure that the comments of every one of the fifteen board members were reflected in the minutes. It could take many days to prepare the minutes after a board meeting. Anyway, it was a very small staff and worked very effectively.

JS: How would you describe the relationship between the board members and the staff?

RN: It was very close.

JS: Obviously with a small organization you probably knew each other.

RN: We knew each other. In those days the board tended to hold its meetings outside of Washington at various resorts around the country, and it was a very close relationship. You ended up having dinner with board members quite often when we were out of

Washington, playing tennis with them, playing golf with them and so forth. So the relationship was very close.

JS: Yes, I can imagine. This period followed a rather difficult period in the history of municipal securities. You had the New York City crisis, Penn Central. Were these things still resonating at the time, when you joined, or was it starting to fade?

RN: The major crisis then involved WPPSS bonds, the Washington Public Power bonds.

JS: The early 1980s, right?

RN: Yes, I believe there was a fault there. That's around the time that I joined the organization. There was some discussion about that. But generally speaking, I think the concern about the Memphis Bond daddies, which had given rise to the creation of the MSRB, was basically behind the organization at that point.

JS: How did you move from the MSRB to the DTC?

RN: The Depository Trust Company was beginning to make municipal bonds eligible for book entry delivery services, at that time mainly bearer bonds. In anticipation of revising MSRB's rules to recognize book-entry delivery, the board invited the registered depositories to make presentations about their services. We were at a dinner one night

with folks from DTC and I happened to be sitting next to a fellow by the name of Jim Riley, who was head of planning.

At that point my wife had taken a job with Citibank, so she was in New York; I was in Washington with the kids. I was looking for a job in New York. I got to talking with Jim Riley and Jim said, “You know, we may have a position on our legal staff for somebody with some knowledge of municipal securities.” So that’s how I became interested in DTC. I came up, interviewed with Bill Dentzer, who was the Chairman at that time, and got the job.

JS: Who was the general counsel at the time?

RN: Ned McGuire.

JS: What was the interest for DTC in processing municipal securities business?

RN: It was the next obvious product for DTC to take on. There was substantial interest on the part of the industry to have DTC make those securities eligible. Custody of bearer bonds was an enormously expensive issue for the banks, so there was an interest in DTC doing it. Fortunately, TEFRA came along, and essentially required all new issuances of municipal bonds to be in registered form. That became effective in 1983.

JS: What were the major obstacles, at least from a legal perspective, that needed to be overcome for to DTC to hold these securities?

RN: I think the major obstacle was with respect to state law. Some states did not recognize the concept of book entry delivery of securities. There had been significant work undertaken on behalf of DTC earlier, and that continued with the help of some other regional repositories. That problem was successfully addressed.

JS: So different representatives from DTC, and maybe in some cases these regional securities depositories, were going around meeting with the state officials, explaining the situation, and trying to get them to pass legislation.

RN: Exactly.

JS: Did you do some of that?

RN: I think I did do some of that, but probably not in person. I do recall having correspondence with folks in California. It was basically insurance laws that were the problem in some of these states. Insurance commissions wanted to make sure that the securities were located within the state. When the Pacific Depository decided to give up the business and DTC absorbed them, we needed to deal with that issue in California.

JS: Tell me a little bit about the relations with labor and unions at DTC. I understand that there were a few issues in the mid-1980s.

RN: Yes, there were a few issues. For a long period of time, DTC's relationship with its union members was determined by the New York Stock Exchange, which was a carryover from an earlier period when the predecessor to DTC was part of the New York Stock Exchange. I think it was called CCS.

In any event, in the 1980s DTC decided to have an independent relationship with its union members. The negotiations with the union, to the surprise of management, fell apart at the last minute. Frankly, I think the management of the union was surprised by that as well. In any event, they took a strike vote, and they went on strike. This was probably 1984.

On the part of DTC management, there was a firm determination that we had to continue to process as we had before. We had made contingency plans to bring in "volunteers" from our members to help. All of us had been cross-trained. Although I was a lawyer, I ended up in the reconciliation department, trying to deal with inquiries from participants asking why they hadn't gotten credit for securities that they were sure they had deposited with us. That went on for a couple or three weeks before enough union members crossed the picket line. The union basically decided to accept the proposal that had previously been made by management. There were negotiations with the union from time to time, but nothing untoward happened.

JS: By the end of the 1980s and early 1990s, there began to be a lot of talk about shortening the settlement cycle, moving from a five-day period to a three-day period. Did that pose legal challenges or was that mostly a technological thing?

RN: I think it was basically a technological issue. I know that our chairman, Bill Dentzer, disagreed with many people in the industry, and with the staff of the SEC, in thinking that the industry really was not ready to move from T+5 to T+3, and took a very strong position on behalf of DTC that that move should be delayed.

JS: Then of course, in the early 1990s that was eventually shortened somewhat, under Bill Dentzer's successor?

RN: Right, it was. There was a long run-up to the conversion to T+3 that began while Bill Dentzer was still chairman, but it continued for a period of time thereafter. Despite the fact that DTC took the position that it did early on, opposing T+3 conversion, we no doubt did the bulk of the work necessary for the industry to get there.

JS: Do you think it is possible one day that it will actually be shortened to either same-day settlement or at least T+1?

RN: Yes, I think certainly the technology ought, at some future time, to permit it.

JS: In the early 1990s, DTC also began to process commercial paper in book-entry reform. Were there legal challenges to that or was that also just technological?

RN: There were other challenges to which we were subject in connection with the whole same-day funds settlement project. We were faced with heavy supervision by the New York Fed. Obviously we had to have a bank account there. I would say the issues were more on the regulatory side than the legal side.

When we moved to commercial paper, I think the biggest difficulty that we had – I don't know whether you'd call it legal or not – was that we needed to mirror the processing that had been going on in a physical world. In particular, paying agents at the time had until 3:00 in the afternoon to reverse new maturities and issuances that day, in the event that the issuer for which they were agent had unforeseen difficulties. We had to come up with a proper procedure to mirror that in the book entry world. Ultimately there was a lot of conversation about that and a lot of input from the Fed and the industry. Ultimately, we had to come up with kind of a jerry-rigged system that preserved that opportunity for agents to refuse new issuances and maturities, without impacting DTC's risk management controls.

JS: Now I'd like to ask you a little bit about the relationship between DTC and the regional depositories.

RN: That goes back to my early days at DTC. One of the first things that Bill Dentzer had me do was to review a draft of a memorandum that he was prepared to send to the SEC about inter-depository interface fees. Bill had a very strong view that the DTC participants ought not to be able to take advantage of their participation in other depositories if that resulted in additional costs to DTC for processing their transactions.

For example, a participant might have a participant account at Midwest Securities Trust Company and one at DTC. They could deposit their securities at MSTC and do a book entry delivery to their account at DTC, then use that securities credit to do a delivery off. In the meantime, the securities were in Chicago. The feeling at DTC was MSTC was not as efficient as we were. They wouldn't inform us as quickly as we normally informed participants about actions involving those securities. They would not pay us the interest and dividends as quickly as we paid our participants. There were all these issues involving additional cost and lack of efficiency, which Bill felt should be reflected in a surcharge to our participants who used the interface. That was a very strong view.

I read this memorandum that he had written. I went into his office and I said, "You know, this sounds like so many angels dancing on the head of a pin." Well, Bill was a very gentle guy, but I remember that he did chastise me in a very gentle manner. (Laughter.) I never made that mistake again. It continued to be an issue that he pressed from time to time. We continued to make filings with the SEC. They continued not to act on them over a long period of time.

That was one continuing issue with the other depositories. Ultimately, they all went out of business. The industry just simply couldn't afford the infrastructure.

JS: Now when you say "go out of business" do you mean that they just were eventually acquired by DTC?

RN: Correct.

JS: Because of course, that's what did happen. Was it always just a matter of the regional depositories coming and saying, "Well, look, we're having trouble. Can you guys take us over?"

RN: That was the case in every case.

JS: Was it?

RN: Absolutely.

JS: So it wasn't like a hostile takeover.

RN: Never. That being the case, there were operational issues that we had to go through, but it was a fairly easy matter to get the SEC to approve those arrangements.

JS: Was DTC ever worried about appearing as though it wanted to have a monopoly? Was that a concern? Were they worried about increased scrutiny, possible nationalization?

RN: Not at that time. There may have been people who were concerned about it, but I think we were happy that we didn't have to deal with the others.

JS: I'd like to ask you about the merger of NSCC and DTC in 1999, obviously a very big event. What led to that merger?

RN: I think it was the industry again. This is the story from the eighties into the nineties. They were not interested in continuing to foot the cost, principally in the technology area, of supporting both DTC and NSCC. NSCC's technology was run by SIAC, and the feeling was that if we could put DTC's technology together with NSCC there could be considerable cost savings. Also, DTC and NSCC weren't always on the same page. We had different boards of directors. We certainly had different managements. We had different ambitions, I suppose.

JS: My understanding is that you were located in the same building, right?

RN: Yes, we were.

JS: But there was very little communication between the firms?

RN: Very little communication between the two. Obviously there was some communication. Transactions that were being processed by NSCC on the securities side were being settled by DTC, so there was communication in those areas. In terms of outreach, I think we did run into some competitive issues.

JS: Did staff ever move back and forth between the two companies or people get hired by one or the other, or would that have been considered treason?

RN: No. It might have been considered treason by some. But no, I don't recall any instance of that happening.

JS: From a legal perspective what were the main challenges of the merger? Obviously there were lots of administrative and personnel issues.

RN: I think that there were some governance issues. NSCC is owned by, at that time, the New York Stock Exchange. I'm not quite sure when the NASD took over the Amex. In any event, those were the two owners of NSCC. With DTC, probably 60 percent of its stock was owned by participants and the other 40 percent was owned by the New York Stock Exchange, the NASD/Amex. So we had to figure out a way to deal with those ownership issues.

Ultimately, the way that was worked out was participants at DTC got one share of DTCC for each share of DTC and the two owners of NSCC got preferred stock, which gave each

of them the right to put one person onto DTCC's board. There were a couple of other divisions that we put in the shareholders' agreement that were important to the New York Stock Exchange and the NASD.

JS: Was the SEC supportive of the decision to merge?

RN: They were. I think they understood the reasons for doing it. I don't recall there being major regulatory issues. I don't recall that there was anything significant in the way of public comment when we went out with filings.

I think that the major issue, like in all mergers, was cultural. Putting the two managements together was not an easy process and some people did not make it. Ultimately, it was a much stronger organization. The people from NSCC that joined their counterparts at DTC were very strong individuals and were very important to the success of DTCC.

JS: Were most of those personnel issues you just talked about, were those decisions made by the board?

RN: No, it was at the management level. We had to deal with putting the two boards together. Kind of an interesting sidelight to that. There were thirty-seven individuals that were on both boards. I think what we did is we gave each participant who was represented on both boards the opportunity to choose one. We got the number down to, I think, twenty-

seven. We were prepared to go forward with a board of twenty-seven and I was informed by the Fed that there was a regulation that prohibited bank boards from being larger than twenty-five. So we had to go to two of the board members and make them observers instead of full voting members. Subsequently we had a participant election and resolved that problem.

JS: That sorted that out?

RN: Jill Considine – I've always said this about the chairman and CEO of DTC and DTCC. She was the right person at the right time. I think Jill was the right person. She had a great way of dealing with the board. She came to DTC and then DTCC with a very strong reputation, particularly among New York bankers. She was just really masterful in dealing with the board, giving them what they needed, and she was a terrific leader. We had a number of programs to deal with the different cultural issues among members of the senior staff, some of which may have been thought to be silly, but those are the kinds of things that companies do to try to put two organizations together. At the end of the day we had a very strong senior leadership.

JS: How did your role as general counsel change after the merger? Did you just have a broader portfolio of issues that you were working on or was it more or less the same stuff?

RN: It was pretty much the same stuff. We had very good lawyers, whom we inherited from NSCC, who continued to work on NSCC matters. Subsequently, we may want to get into this, we had an integration with the Government Securities Clearing Corporation, Mortgage Backed Securities Clearing Corporation and EMCC, which no longer exists. Those organizations also had very strong lawyers, so I did not really need to get into their issues.

JS: How closely did you work with the SEC during this period? I mean, were you in contact with them quite a bit?

RN: Yes. My whole career, from the time I left the SEC – the major focus of what I did was dealing with the Commission. At the MSRB we had to get our rules approved by the Commission. We were inspected by the Commission; it was the same at DTC and DTCC. So there was a lot of conversation with the Commission staff. That partnership was very important to both organizations that I was general counsel of.

JS: Did you, in general, throughout this period after you left the SEC, find that the SEC was sympathetic or was willing to listen to the concerns of the regulatees?

RN: Certainly my relationship with the Commission staff was very good and on their part, they were very responsive. I always thought it was important, in dealing with the Commission staff, to be open and above board, and to recognize that the Commission staff's SOP was to be a little bit skeptical – which was a good thing. That's the way I was

when I was on the Commission staff. They needed information. They absolutely needed not to be surprised.

It was important, before making a filing, to go in and talk to the Commission staff about what it was that we were attempting to do, trying to answer their questions and to make sure that if we anticipated adverse comments in the comment period, to give the Commission staff a heads-up so they would not be surprised. I think in general, my relationship with the Commission staff was good and was very productive.

JS: Was that heads-up, was that usually a formal thing, they wanted a formal letter about it?

RN: It was just a heads-up. Maybe during the course of the initial meeting that I had with them I'd say, "You may be getting some comments from so-and-so about this. This is probably what they're going to say." That process became a little bit more formal as time went on. Although I would make them aware that there were adverse comments coming in, when they got the comment letter they would require me to respond to it in writing.

I was very fortunate that, both at the MSRB and at DTC and DTCC, I dealt with the same people over a long period of time. When I was at the MSRB, I dealt with the same branch chief. That was Jonathan Kalman. I dealt with Jon during the time that I was there and during a period of time while I was at DTC. Then he was replaced by Jerry Carpenter. Both of those people knew me, they knew that they could trust what I was

telling them, and they were very familiar with the organizations that I was representing. So it was a very fortunate circumstance for me.

JS: Are there any particular issues that came up during these early years, after the merger, that you'd like to comment on?

RN: Just going back to the question you just asked, I would say that the one series of issues where I had the most difficulty, and this is entirely predictable, were issues involving competition. I mentioned earlier the interdepository interface fees. That was obviously a very controversial issue. The Commission staff no doubt felt, "here's this big guy in New York." The effect of putting in these surcharges is going to cause those participants who are members of other depositories to close those accounts down and do all their business with DTC.

We also had the issues involving Thomson Financial.

JS: Is this the plan for the global settlement system?

RN: Right.

JS: Can you tell me a little bit about how that played out?

RN: At DTC we had the Institutional Delivery system. Back in 1983, the SROs essentially required DTC's ID system to be used by brokers who wanted to extend the delivery versus payment privilege to their customers, typically institutions. The way the ID system worked was that, following the execution of a trade, the broker-dealer put in a confirmation. It was communicated to the investment advisor and the institution's settlement agent. The investment advisor would have an opportunity to affirm or disaffirm the trade. Then once it was affirmed, it would automatically go to settlement at DTC.

Thomson had a system called Oasys that compared trades in a different way, starting with a block trade. The investment advisor would essentially allocate the block trade to its customers, and then the process would continue. In the mid-nineties, DTC, in furtherance of going to T+3, wanted to put in a similar kind of system and did a filing with the Commission, which was opposed by Thomson Financial as being anti-competitive.

That was an enjoyable period of time for me, because I got to write lots of letters to the SEC, basically saying, "Look, if Thomson Financial wants to compete with us, they should become a registered securities depositor, just like we are." Then they would write back and so forth. Eventually, DTC and Thomson Financial decided to get together and create what became Omgeo.

JS: That was somewhat unprecedented in the history of DTC, as I understand it, cooperating with a private company and developing a product.

RN: Absolutely. As far as I can tell we had never done that. Obviously we had integrated with other clearing corporations, which became wholly owned subsidiaries of DTCC. We had never entered into an arrangement with a private company in which we owned less than the entire interest. In this case, we ended up with I think 51 percent of the stock of Omgeo and Thomson Financial ended up with 49 percent.

JS: I understand that you also had difficulty dealing with the Commission at some point during this period after the merger in regards to a specific rule filing. Was that correct?

RN: Yes, that was another issue where there was an allegation involving competition. The NSCC, in this case, had proposed a new process to deal with the communication between brokers that sponsored separately-managed accounts and advisors. It was very similar to the kind of communication setup that NSCC had had for a number of years for mutual funds. In any event, we did a filing with the Commission, not expecting there to be any opposition. It was something that had been vetted with the SMA industry. It was something that they wanted.

We did a filing – I think in 2003 – and lo and behold a comment letter was sent to the Commission by Senator Miller from Georgia, who although he was a Democrat had made a speech at the Republican National Convention in 2004. He was somebody that the

Republicans on the Commission paid some attention to. In his letter, he said that the SEC's imprimatur on this SMA proposal, if they approved it, would be the death of a competitor who was a constituent of his in Georgia. In fact, his constituent was in a different business than ours.

In any event, we got hung up at the Commission, first at the staff level, requesting additional information over an extended period of time before they would even present it to the Commission. I think we got delayed by about two years. Eventually, we got it to the Commission. There was a vote, two Democrats in favor, two Republicans against. The fifth member, who was a Democrat, abstained. And we weren't able to get approval. P.S., in 2008, DTCC was finally able to introduce this service through an unregulated subsidiary.

JS: All right, there's one final issue I want to ask you about that DTCC dealt with during this period, and that's the issue of naked short selling, which came up in the early 2000s and still pops up occasionally in the news. What is that, naked short selling?

RN: A requirement of selling short is that when you do so you know that you are able to locate the same securities for delivery. Naked short selling is selling short without having any knowledge that you can acquire the securities of the type that you have sold. It was an allegation that was made by some companies whose stock price was going down – that this was the fault of naked short sellers. That may or may not have been the case. Somehow or other, NSCC got involved in this litigation. It was claimed that NSCC's

procedures, specifically the stock borrowed program, which in fact, was designed to facilitate settlement and had been filed with and approved by the Commission many years before, was somehow promoting naked short selling.

This was litigation that we desperately wanted to avoid because of the difficulty of trying to describe to a jury or a judge precisely what it was we do and what the stock borrowed program was, and what naked short selling was, and why the former is irrelevant to the latter. Fortunately, we were able to get it dismissed out of all of the lawsuits that were filed.

JS: Did DTCC offer input into the drafts that eventually ended up being Regulation SHO?

RN: Yes, we did.

JS: DTCC was basically happy with that regulation?

RN: We were happy to provide the information as required.

JS: In 2008 you retired from DTCC. Since then, or perhaps even before – I’m not sure – you’ve been involved with the SEC Historical Society, which this interview is being done for?

RN: Right.

JS: Will you tell me about how you got involved?

RN: I think it was actually back in maybe 2006 or 2007 that I got a call from Dick Rowe, who was involved with the Society at that time. I don't think he was a trustee, but he was on the Museum Committee. He asked me if I would be interested in getting involved with the Society as a member of their Advisory Council. I said sure and so I was a member of the Advisory Council and ultimately got elected as a trustee in 2007.

I had been Secretary and on a couple of committees, and a couple of years ago I was asked if I wanted to stand for election as President. As I told the trustees at our last meeting, I was absolutely certain when I got that call that I had to have been the third or fourth person that was asked, and I really wanted to know why the others had turned it down. Anyway, I was assured, no, I was the only candidate. I don't know whether that's true or not.

In any event, I have served as President. I'm currently Chairman. I'm going off the board after May of next year. I've been thrilled to be involved with the Society. All anybody has to do is just go online to www.sechistorical.org to see this wonderful virtual museum and archive that the Society has developed. It's got so much interesting information about the history of securities regulation in this country, including interviews with critically important people, some of whom unfortunately are no longer around.

There are documents that are not available in this form anywhere else. The museum is free of charge. It's open 24-7. It's just a wonderful resource.

As time has gone on, I think we have finally gotten to over a million visitors to the museum and it's only been around for ten years. It has been a very rewarding endeavor on my part. I would certainly encourage anybody that listens to this interview, if you are not involved, to get involved, particularly if you were, as I was, a member of the staff of the Commission. It's the story of our history as professionals.

JS: We appreciate all your hard work and also for taking time to talk with us today.

RN: Thank you.

JS: Thank you very much.

[End of Interview]